

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Goold Health Systems, Inc., an Emdeon company, with a principal place of business in Augusta, Maine (hereafter called "Contractor"). The Contractor's form of business organization is a Corporation. The Contractor's address is 45 Commerce Drive, Suite 5, PO Box 1090, Augusta, Maine 04332-1090. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of services related to Medicaid supplemental drug rebates and other Medicaid pharmacy benefit rebates. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$347,115.60.
4. **Contract Term.** The period of Contractor's performance shall begin on April 1, 2015 and end on March 31 2017. This contract may be extended for up to a two (2) year extension at the discretion of DVHA acting on behalf of the SSDC.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the Secretary of Administration is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least sixty (60) days in advance.
8. **Attachments.** This contract consists of 105 pages including the following attachments, which are incorporated herein:
  - Attachment A - Specifications of Work to be Performed
    - Appendix I: Performance Standards & Operational Metrics: SSDC Collective Services
  - Attachment B - Payment Provisions
  - Attachment C - Customary State Contract Provisions
  - Attachment D – Modifications to Contract Requirements and Attachments
  - Attachment F - Customary Contract Provisions of the Agency of Human Services
  - Attachment G – State of Iowa Specific Contract Provisions
  - Attachment H – State of Maine Specific Contract Provisions
  - Attachment I – State of Wyoming Specific Contract Provisions
  - Attachment J - Contract CD that includes the following:

The order of precedence of documents shall be as follows:

1. This document
2. Attachment D

3. Attachment C
4. Attachment A
5. Attachment B
6. Attachment F
7. Attachment G
8. Attachment H
9. Attachment I
10. Attachment J - Contract CD

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.**

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steven Costantino, Commissioner  
Department of Vermont Health Access  
(DVHA)  
312 Hurricane Lane Suite 201  
Williston, VT 05495-2087  
Phone: 802-879-5955  
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\_\_\_\_\_  
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**ATTACHMENT A  
SPECIFICATIONS OF WORK TO BE PERFORMED**

**I. SOVEREIGN STATES DRUG CONSORTIUM (SSDC) BACKGROUND**

The national Medicaid Drug Rebate Program was created by the Omnibus Budget Reconciliation Act of 1990 (OBRA'90). It requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services (HHS) for states to receive Federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by the Centers for Medicare & Medicaid Services (CMS).

Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) provides the regulatory authority for the national Medicaid Drug Rebate Program. Rebates are paid to states and the federal government based on units utilized in each state. The terms and conditions of the setting of Medicaid Drug Rebate Program rebates and their payments are found in this section of law.

A number of states have obtained approval from the Centers for Medicare and Medicaid Services (CMS) to enter into Medicaid rebate agreements supplemental to the national Medicaid Drug Rebate Program rebates under conditions found in Section 1927 of the Social Security Act (42 U.S.C. 1396r-8).

In 2004, CMS approved the first multi-state Medicaid supplemental rebate pooling arrangement.

In the fall of 2005, the states of Iowa, Maine, and Vermont formed a state administered multi-state pooling arrangement, the Sovereign States Drug Consortium (SSDC) and were the membership for the first rebate calendar year of 2006. Utah joined as of rebate calendar year of 2007, Wyoming as of rebate calendar year 2008, West Virginia as of rebate calendar year 2009, Oregon as of rebate calendar year 2009 beginning July 2009, and Mississippi as of rebate calendar year 2012 beginning July 2012.

The SSDC obtained the approval of CMS through individual Medicaid State Plan Amendments. Iowa, Maine, and Vermont received the first approval letters in July 2006. Utah, Wyoming, West Virginia, Oregon, and Mississippi have all received approval letters since joining the pool.

As of January 2015, all Member States participate in the SSDC by memorandum of understanding. It should be assumed that additional states will participate in this arrangement in the future.

**II. SSDC OPERATIONS**

The SSDC believes that the multi-state Medicaid rebate process has become a key component in its members' efforts to contain costs.

The SSDC believes that the preferred drug and pharmacy benefit management systems implemented by its Member States have been effective tools in helping manage pharmacy costs and maintaining access to pharmacy benefits for vulnerable, low-income populations. Central in each state's system is a Preferred Drug List (PDL). A state's PDL is a list of preferred prescriptions developed with its Pharmacy & Therapeutics (P&T) Committee. The PDL presents options for prescribers' consideration for use in meeting the drug therapy needs of their patients. Medications are preferred if they meet clinical and therapeutic criteria established by the Committee and are cost-effective. Products that are not preferred can be prescribed and reimbursed based on a clinical review of necessity for a particular patient situation. These reviews constitute prior authorization (PA) review protocols that are developed with the guidance of the state's P&T Committee.

Under the SSDC pooling program, the Member States leverage the purchasing power of their combined covered lives in negotiations to obtain drug and other pharmacy benefit rebates from pharmaceutical manufacturers. These supplemental drug rebates obtained are in addition to the baseline standard CMS rebates that the pharmaceutical manufacturers must pay states to participate in the Medicaid program under the provisions of the national Medicaid Drug Rebate Program and the supplemental rebate agreements used by the Member States have been authorized by CMS. In obtaining supplemental rebates, SSDC Member States are able to offer greater preferred choices in the classes of their PDLs.

While SSDC Member States work together to obtain rebates, ultimately they maintain their independence in managing their programs. Decisions on choice and flexibility remain with each individual state and its P&T Committee in determining which classes to include on its PDL and which drugs and pharmacy benefit products to select as preferred. As a result, Member States may vary considerably in their formularies, their clinical criteria, and in their approach to rebates.

The SSDC pool is a state administered pool. It is “owned” by the Member States it serves and not by the vendors/contractors who work with and for the SSDC or its Member States. Contracting with a particular vendor is never a condition of membership in the SSDC. And the SSDC’s contracted rebate bid procurement vendor may not characterize the pool as a service it offers states because the vendor does not “own” the pool. Any state may choose to participate in the SSDC.

Under the SSDC model, 100% of all rebate revenues are returned to the Member States. They are not shared with any contractor engaged in activities to support rebate activities.

In support of the SSDC, the State of Vermont, Department of Vermont Health Access (DVHA) is contracting for services to solicit, negotiate, and procure Medicaid supplemental drug rebate bids and other Medicaid pharmacy benefit rebates on behalf of the states that are members of the SSDC.

## **II. PERTINENT DEFINITIONS**

The following are definitions used in this contract and used in the course of delivering the services described in this contract:

Claim	A bill rendered by an enrolled Medicaid provider to a state Medicaid program for a product or service dispensed on behalf of a covered beneficiary.
Data Element	A specific unit of information having a unique meaning.
Member States	The states participating in the SSDC by agreement with the members.
Mid-Year Bids	Bids developed between rebate calendar year/bid year procurement cycles. Usually available as soon as administratively possible.
National Drug Code (NDC)	The unique code used to identify the specific drug on a claim.
Prior Authorization	The pre-claim submission approval that must be obtained from a designated professional for specified products/services for a specified Medicaid patient.
SSDC	Sovereign States Drug Consortium

Units	The specific quantity of a product on a claim.
Year, Agreement	The agreement year to which an agreement with a manufacturer for drug rebates applies. In this contract, the agreement year is generally the rebate calendar year.
Year, Bid	The year against which rebate bids are solicited. In this contract, used interchangeably and in combination with the term Rebate Calendar Year. In other rebate programs, a Bid Year may be any months in a calendar year. In this contract, the Bid Year is equal to a calendar year, January through December.
Year, Calendar	A calendar year begins with January and ends with December of any given year.
Year, Contract:	In this contract, the 365 day period (366 day period in a leap year) that begins on the anniversary of the start of this contract. In the SSDC, services are performed in a Contract Year to procure rebates in a Rebate Calendar Year. That Rebate Calendar Year is the January through December period that is the calendar year that starts after the annual anniversary of the start of this contract.
Year, Fiscal	The fiscal year in this contract is the fiscal year for the State of Vermont, July 1 of a year through June 30 of the following year.
Year, Mid	An activity that occurs in the middle of a year. In this contract, refers to rebate bids developed between rebate calendar year procurement cycles. These are usually available as soon as administratively possible in the rebate calendar year.
Year, Rebate Calendar	The January through December calendar year against which rebate bids are solicited. In this contract, used interchangeably and in combination with the term Bid Year.

### **III. GENERAL DELIVERABLES**

The SSDC procures supplemental rebate bids on Medicaid covered drugs as defined in Section 1927 of the Social Security Act (42 U.S.C. 1396r-8).

The SSDC also procures rebate bids on diabetic supplies. Diabetic supplies are treated as merely an additional pharmacy benefit related product line subject to rebate negotiations. Throughout this contract, it should be assumed that references to drugs apply to diabetic supplies, that references to supplemental drug rebates apply to diabetic supply rebates, and that references to supplemental drug rebate bid procurement services also apply to diabetic supply rebate bid procurement services.

The SSDC may at some future date consider rebate opportunities on other pharmacy available items. The extent to which the supplemental rebate terms and conditions apply to these will be established by mutual agreement at that time.

The SSDC Member States believe that components of their supplemental drug rebate program could be broadly defined as:

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for Member State information and use, for presentation to manufacturers as part of the annual rebate bid procurement, and for use in bid presentation and evaluation.

- Rebate bid solicitation for annual review and as needed: Creation of a bid solicitation process including the provision of the vehicles(s) for manufacturers to submit bids. Communication with manufacturers throughout the process including but not limited to the web posting of general requests for proposals, manufacturer specific requests for proposals, and responses to manufacturers' questions.
- Bid presentation at the SSDC annual meeting and as needed: Provision for state review of a compilation of offered rebate bids with pertinent related conditions, factors, and/or information.
- Bid review: Review of offered rebate bids by states collectively and individually to determine what best meets the needs of select and/or individual states.
- Rebate bid negotiation annually and as needed: Negotiation that may occur at the request of a state or states after any bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notifications to manufacturers.
- General collective administrative functions: Including but not limited to the creation and maintenance of a web page to provide manufacturers and others with pertinent information about the SSDC; general communications with participating states, manufacturers, and others; notification to manufacturers of changes in Member State participation during agreement year(s); data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting organization, coordination, support, and management.
- Contract finalization: Execution of contracts using each state's rebate contract format.
- Preferred drug list (PDL) development: Development of state specific PDLs.
- Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
- Contract management: Management of the terms and conditions of each state's executed rebate contracts.
- PDL management: Oversight of each state's PDL.
- Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.
- Rebate billing: State specific billing.
- Rebate dispute resolution: State specific rebate dispute management.
- Rebate collections and reporting: State specific collections and reporting.

The SSDC believes that the **sole collective services** shared by all of its Member States are supplemental drug rebate bid procurement and the services necessary to support it. These are:

1. Member States' utilization data compilation.
2. Rebate bid solicitation for annual review and as needed.
3. Bid presentation at the SSDC annual meeting and as needed.
4. Rebate bid negotiation annually and as needed.
5. Bid selection notification.
6. General collective administrative functions.

While extensive interaction and collaboration with all parties in all activities is necessary, all other components, other than the listed core collective services, are the responsibility of the individual Member States and their internal and contractual resources working independently and/or coordinating with other Member States and their resources.

The six **sole collective services** are the services to be provided under the terms and conditions of this contract. The Contractor shall be responsible for them as of April 1, 2015. The Contractor will be responsible for

supporting rebate agreements for calendar year 2015 including those negotiated prior to April 1, 2015 and for all agreements for calendar year 2016 and later through the term of the contract.

**A. Member States' Utilization Data Compilation**

For each rebate calendar year bid year, Member States provide drug utilization data for a prescribed period of time for Medicaid eligibles. That may be as little as three months of data or as much as twelve months of data. Minimum general data elements would be:

- National Drug Code (NDC)
- Drug name
- Number of units by age
- Number of scripts by age
- Preferred Drug List category
- PDL preferred status (tiers, etc.) to the extent that it is available from Member States

The Contractor is responsible for the compilation of this data used in the bid procurement process. During any period, Member States may require the Contractor to do a comparative compilation for their individual program operations' purposes or for presentation to others including potential Member States. The SSDC shall require the Contractor to compile utilization data of potential Member States in the course of expanding SSDC membership.

**B. Rebate Bid Solicitation**

Prior to the rebate bid solicitation for each rebate calendar year/bid year, it is required that the Contractor meet with the SSDC Member States to discuss the strategy for the upcoming year. This includes the policy and process approved by the SSDC Member States and any planned changes to either. These meetings can be telephonic, web-based, and/or electronic. These meetings are not required at the physical location of any Member State.

For each rebate calendar year bid year, the Contractor shall communicate with all manufacturers to notify them that the bid procurement process is beginning and what is being requested. The drafting of any manufacturer notifications shall be the responsibility of the Contractor. The language of this notification shall be subject to the approval of the SSDC Member States.

The Contractor shall provide a website for manufacturers to submit bids and the instructions for the use of the vehicle. The Contractor shall provide an alternative vehicle (for example, written means) of accepting a bid should a manufacturer require it.

Generally, the SSDC does not entertain bids between annual bid procurement periods though some exceptions may occur; for example, with the release of new products. Any resulting related activities shall be supported by the Contractor.

**C. Bid Presentation**

For each rebate calendar year bid year, bids solicited must be presented to Member States for review at the SSDC's annual meeting. The presentation must be in manner that is agreed upon by the Member States and that facilitates the review by Member States and their staff to the extent that they require. It can be expected that the presentation may require the inclusion of information other than the actual bid details on any factors and/or conditions known to Member States that may have an impact on a bid over

the course of the Rebate Calendar Year; for example, anticipated federal law/rule changes; generic and/or brand drug developments; known litigation; etc.

Presentations other than for the rebate calendar year may also be necessary. Examples include:

- Providing aggregate, non-bid specific data to potential Member States to allow them to assess the viability of the multi-state pooling approach in their operations;
- Facilitating new Member States' review of current year bids in their initial year of membership;
- Presenting new product offerings to Member States.

**D. Rebate Bid Negotiation**

In the process of bid procurement, the terms and conditions of specific bids may need to be clarified. In addition, Member States may request that the Contractor negotiate with a manufacturer or manufacturers to refine bid offerings. Such negotiations might be on behalf of all states or on behalf of an individual Member State to meet its particular needs. It is the responsibility of the Contractor to be the point on such negotiations. It is not the SSDC's intent to simply accept a bid submitted by the manufacturer, there must be active negotiation by the Contractor.

**E. Bid Selection Notification**

At the conclusion of any procurement process, bid year or mid-year, manufacturers must be notified that their products have not been selected or have been selected. If the products have been selected they must be notified of what has been selected and any conditions that have been set in the negotiation process. They must be notified of each Member State or the agent of the Member State that will complete the contracting and that all discussions thereafter are with the Member State or the state's agent.

**F. General collective administrative functions**

The Contractor shall be responsible for a variety of administrative functions in support of the SSDC.

**i. Contractor organization and staffing**

Each Member State and its staff shall have equal access to the Contractor for the six Medicaid sole collective rebate services specified in this Contract. The Contractor shall be responsible for providing all organizational resources necessary to deliver these services.

The SSDC does not require dedicated staff to be assigned to this contract but does require a single point of contact. The Contractor shall designate a Project/Account Manager who shall serve as a single point of contact for the SSDC. Otherwise the Contractor is responsible for providing all staffing resources necessary to deliver the services specified in this Contract.

The SSDC shall not designate the specific qualifications of the staff that support this contract but shall require the assurance that the staff performing the work specified in this contract have the qualifications and experience necessary.

As of April 1, 2015, and as changes occur, the Contractor shall provide the SSDC with a key contact list to include: name, qualifications and experience, area of expertise/responsibility, telephone and/or extension number and cell phone number, and e-mail address.



**ii. Contractor office**

The Contractor may operate from the location of their choice. There is no expectation under this contract that the Contractor secure office space in Vermont or in any other SSDC Member State.

**iii. SSDC web page**

The Contractor shall be responsible for the creation and maintenance of a dedicated SSDC web page to provide drug manufacturers, other states, CMS, insurers, the press, and other interested parties with pertinent information about the SSDC.

**iv. Communications**

The Contractor shall provide ready communication methods including but not limited to telephone, cell phone, fax, “fax blast”, land mail/delivery services, electronic mail, telephone conferencing, electronic meetings, and access to web based “cloud” services.

The Contractor shall be the point of contact for SSDC general communications. These communications may involve telephones, fax machines, e-mail, and mail involving the U.S. Postal Service and other vendors; e.g., FedEx, UPS, etc.

The Contractor shall be able to manage general inquiries from interested parties about the SSDC. This includes providing verbal and written information and assessing when inquiries must be managed by a SSDC agent or a Member State. At a minimum, this requires a dedicated e-mail address.

The Contractor shall handle all inquiries from manufacturers requesting information on the SSDC and its drug and other pharmacy benefit rebate negotiations. This requires a point person to be the contact and a dedicated e-mail address. It also requires that the web page described above be interactive.

The Contractor shall be responsible for notifying manufacturers of Member State participation during agreement year(s). This shall include announcements of changes and management of any Addendums to Member State manufacturer agreements that officially document participation in the SSDC.

**v. Printed and internet posted materials**

The Contractor shall request and receive approval from the SSDC Member States or its agent(s) in advance of distribution or internet posting of any materials in support of the SSDC.

**vi. SSDC Member State internal and contracted resources**

The Contractor shall be willing to work with Member States and their agent(s) and staff. Extensive interaction and collaboration between the Contractor and its staff and the Member States and their agent(s) and staff in all activities will be necessary. The staff of any individual Member State may consist of both state employees and contract employees. SSDC Member States may designate their agents in support of their rebate activities who will work with the

Contractor. All agents will receive the same services as all representatives of the Member State. When such agents are employees of other contractors, the Contractor may require a non-disclosure agreement to protect any Contractor proprietary methods, systems, and/or information. The content of such agreements is subject to the approval of the Member States.

The Contractor shall understand that due to the nature of the SSDC, it is of the utmost importance that all communication to all Member States be both timely and accurate. All Member States' needs to access information must be met equally.

**vii. Training**

The Contractor shall be responsible for training Member States and their agent(s) and staff in the contracted supplemental rebate procurement processes. The Contractor shall produce a SSDC User Manual, a Business Rules Document, and/or like instrument(s) that describes the process. The users will be the Member States and their agent(s) and staff. Such material(s) should be an operations resource that can be referred to and that can be updated when and if subsequent changes need to occur. Such material(s) shall include but not be limited to:

- a. The schedule for activities and how it will be agreed upon.
- b. Steps taken to procure bids.
- c. Bid option alternatives offered.
- d. Steps taken in presenting to Member States.
- e. Steps taken in following up with manufacturers.
- f. Steps taken in finalizing bids.
- g. Circumstances when interim bids should be considered.
- h. Reports used.
- i. Information in reports.
- j. Methodologies to assure accuracy.
- k. Methodologies to assure timeliness.

As part of this, access to necessary screens on any on-line system or access to materials stored on any web based "cloud" service shall be made available to Member States and their agent(s) and staff. A description of those screens and how to access them shall be included in a user resource instrument. A description of the web based "cloud" service(s) and how to access materials stored there must be made available to Member States and their agent(s) and staff.

**viii. Electronic and data requirements**

The Contractor shall be able to develop SSDC data for analysis and reporting using standard and decision support capabilities. The Contractor shall be able to compile such data to produce paper and/or electronic reports.

The Contractor shall have the ability to provide reports for all or select Member States and their agents and/or staff as identified in this contract and otherwise. The content, details, and expectations of certain reports are as specified here. The content, details, and expectations of future reports shall be mutually agreed upon over the term of the Contract.

At a minimum, the Contractor shall meet the following requirements:

- The Contractor shall accept non-beneficiary specific claims' utilization data in a mutually acceptable electronic format. Data sources include the SSDC Member States and their specified contractors.
- The Contractor shall capture and maintain other data that shall include:
  - a. Information on manufacturers (e.g., name, products, contact address/e-mail/phone number, labeler number, etc.).
  - b. Data on manufacturer outreach activities at the manufacturer level (e.g., subject, date contacted, etc.).
  - c. Documented steps in each level of rebate procurement manufacturer contact (e.g., offers, counteroffers, final offers, etc.).
  - d. Documented steps in each Member State contact regarding rebate bids (e.g., offers, counteroffers, final offers, etc.).
  - e. Reason(s) for manufacturer non-participation (e.g., unable to contact, mail returned to sender, refused to participate, etc.), at each level of contact.
- The Contractor shall consult with the SSDC Member States on the creation of appropriate data collection instruments. Comprehensive report formats, data dictionaries, file specifications and code books shall be provided to the SSDC Member States as soon as they are available and in advance of any related data transfer.
- Data shall be provided upon request and/or at regular, agreed-upon intervals.
- The Contractor shall provide data in a timely manner to the SSDC Member States in compliance with the performance standards outlined in Appendix I of this Attachment.

The Member States of the SSDC require standard reports and ad-hoc reports that support decision making. At a minimum, the Contractor shall provide or have available:

1. Manufacturer contact list
  - Identifies all manufacturers/labelers and for each:
    - a. The designated point of contact and his/her:
      - i. Phone and/or cell number and
      - ii. E-mail address
    - b. The designated mailing address, and
    - c. Any alternative contact information.
  - Produced at time of rebate calendar year bid year solicitation.
  - Produced upon request.
  - Produced at termination of rebate bid procurement contract.
2. Manufacturer and product list
  - Identifies manufacturers with SSDC agreements and their products by:
    - a. Manufacturer name,
    - b. Labeler, and
    - c. Drug NDC, or other mutually agreed upon code identifier, and name.
  - Produced upon request.
  - Produced at termination of rebate bid procurement contract.
3. Manufacturer outreach report
  - Identifies contacts related to the SSDC outside the bid process:
    - a. Type; e.g., complaint, etc.,
    - b. Subject,
    - c. Date, and
    - d. Any resolution.

- Produced semiannually: prior to or on April 1<sup>st</sup> of each calendar year and prior to or on October 1<sup>st</sup> of each calendar year.
- Produced upon request.
- 4. Manufacturer news report
  - Provides narrative information related to news in the product manufacturer industry that may affect drug and pharmacy benefit rebates.
  - Provides information related to products including but not limited to:
    - a. Products coming to market and
    - b. Planned line extensions.
  - Provides information related to business aspects including but not limited to:
    - a. Company acquisitions and
    - b. Company changes in management.
  - May require the provision of Member State specific utilization or financial projections based on the news reported.
  - Produced every other week when there is information to report.
- 5. Drug Therapeutic Classification/States' Preferred Drug List Crosswalk
  - Provides a crosswalk of Member States' Preferred Drug Lists to a mutually agreed upon drug therapeutic classification.
  - Produced as a tool for Member States' for reviewing bid reports.
  - Produced prior to the SSDC annual meeting to review bids.
- 6. Member State comparative utilization report
  - Compares utilization in Member States for the period of time prescribed for data compilation.
  - At a minimum, identifies drugs by:
    - a. Therapeutic class,
    - b. National Drug Code (NDC), or other mutually agreed upon code identifier,
    - c. Drug name,
    - d. Drug strength,
    - e. Brand or generic status,
    - f. Total number of unique recipients using the given drug,
    - g. Units dispensed, and
    - h. Total payment for the drug for the period.
  - Produced at the time of rebate calendar year bid year solicitation.
  - Produced periodically as mutually agreed.
- 7. Weekly status report
  - Reports on the progress of the bid year solicitation schedule.
  - Lists status of agreed upon bid year solicitation activities and includes:
    - a. Activity name and identifier,
    - b. Start date,
    - c. Scheduled completion date, and
    - d. Completion date.
  - Produced during the rebate calendar year bid year solicitation.
  - Produced to provide Member States and their agents and/or staff with progress status.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Word or Excel. Must be available electronically; for example, via email; a secure web based "cloud" service or electronic bulletin board, etc. Must be available to Member State agents as well as staff.

- Produced weekly during the rebate calendar year bid year procurement period unless otherwise approved by the Member States.
  - Produced weekly if mid-year bids procured unless otherwise approved by the Member States.
8. Bid proposal report
- Identifies individual and collective proposals as received.
    - a. Presents the bids by agreed upon class sorted in alphabetical or agreed upon order and includes:
      - i. Drug name,
      - ii. National Drug Code (NDC), or other mutually agreed upon code identifier,
      - iii. Manufacturer name,
      - iv. Therapeutic class,
      - v. Drug strength,
      - vi. Period of bid (year, multi-year, etc.),
      - vii. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
      - viii. The Centers for Medicare and Medicaid Services (CMS) rebate,
      - ix. The current supplemental rebate if there is one,
      - x. The current state net price, and
      - xi. The previous past period bid(s).
    - b. Presents the formula showing a percent of WAC or other agreed upon price or a guaranteed net price (GNP).
    - c. Presents all information for all offer tier(s).
    - d. Provides relevant offer comments.
    - e. Provides option for reviewer input of notes/comments/responses.
  - Produced to provide Member States and their agents and/or staff with notice of bids as received.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel spreadsheet. Must be available electronically; for example, via access to the bid solicitation vehicle; a database capturing and compiling bids; a secure web based “cloud” service or electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
  - Produced weekly during the rebate calendar year bid year procurement period unless otherwise approved by the Member States.
  - Produced weekly if mid-year bids procured unless otherwise approved by the Member States.
  - Produced weekly if new proposals are received outside the rebate calendar year bid year procurement period.
9. Bid non-proposal report
- Identifies individual and collective drugs with existing supplemental rebates where proposals were not received for the rebate calendar year bid year procurement period
    - a. Presents by agreed upon class sorted in alphabetical or agreed upon order and includes:
      - i. Drug name,
      - ii. National Drug Code (NDC), or other mutually agreed upon code identifier,
      - iii. Manufacturer name,
      - iv. Determined reason for no proposal,

- v. Therapeutic class,
    - vi. Drug strengths,
    - vii. The current period of bid (year, multi-year, etc.),
    - viii. The current Wholesale Acquisition Cost (WAC) or other agreed upon price,
    - ix. The current Centers for Medicare and Medicaid Services (CMS) rebate,
    - x. The current supplemental rebate,
    - xi. The current state net price, and
    - xii. The previous past period bid(s).
  - b. Provides projected state losses using an agreed upon sample quarter's utilization on the best offer tier.
  - Produced to provide Member States and their agents and/or staff with notice of bids not received.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel spreadsheet. Must be available electronically; for example, via access to the bid solicitation vehicle; a database capturing and compiling bids; a secure web based "cloud" service or electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
  - Produced two weeks after close of rebate calendar year bid year procurement period unless otherwise approved by the Member States.
  - Produced two weeks after close of procurement period if mid-year bids procured unless otherwise approved by the Member States.
10. Bid presentation report
- Identifies individual and collective proposals as received.
    - a. Presents the bids by agreed upon class sorted in alphabetical or agreed upon order and includes:
      - i. Drug name,
      - ii. National Drug Code (NDC), or other mutually agreed upon code identifier,
      - iii. Manufacturer name,
      - iv. Therapeutic class,
      - v. Drug strength,
      - vi. Period of bid (year, multi-year, etc.),
      - vii. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
      - viii. The Centers for Medicare and Medicaid Services (CMS) rebate,
      - ix. The current supplemental rebate if there is one,
      - x. The current state net price, and
      - xi. The previous past period bid(s).
    - b. Presents the formula showing a percent of WAC or other agreed upon price or a guaranteed net price (GNP).
    - c. Presents all information for all offer tier(s).
    - d. Reports factors and/or conditions and any identified related impact during the Rebate Calendar Year on the individual bid proposal(s).
    - e. Provides relevant offer comments.
    - f. Provides option for reviewer input of notes/comments/responses.
  - Produced for Member States and their agents and/or staff.
  - Produced for Member States decisions.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via

- access to the bid solicitation vehicle; a database capturing and compiling bids; a secure web based “cloud” service or electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
- Produced no less than two weeks prior to the SSDC annual meeting to review bids unless otherwise approved by the Member States. May be limited to the bid information available at that time.
  - Produced in presentation form no less than one week prior to the SSDC annual meeting to review bids unless otherwise approved by the Member States.
  - Produced no less than ten (10) days after receipt if mid-year bids made unless otherwise approved by the Member States.
11. Bid financial analysis report
- Provides projected state savings using an agreed upon sample quarter’s utilization against the best offer tier.
  - Presents drugs by class sorted in alphabetical or agreed upon order and includes:
    - a. Drug name,
    - b. Drug strength,
    - c. Brand/generic status,
    - d. Tier,
    - e. Current PDL status,
    - f. Utilization by units and scripts for quarter,
    - g. Calculated percentage share of class market,
    - h. Calculated cost by units and scripts after rebates paid under the national Medicaid Drug Rebate Program,
    - i. Calculated cost by units and scripts after rebate offset amounts under the national Medicaid Drug Rebate Program, and
    - j. Calculated net calculated cost by units and scripts with supplemental rebate.
  - Produced in presentation form no less than one week prior to the SSDC annual meeting to review bids unless otherwise approved by the Member States.
  - Produced for bid cycle no more than one month after the conclusion of annual or mid-year bidding negotiations.
12. Bid update report
- Identifies individual and collective updates as received.
    - a. Presents the bids by agreed upon class sorted in alphabetical or agreed upon order and includes:
      - i. Drug name,
      - ii. National Drug Code (NDC), or other mutually agreed upon code identifier,
      - iii. Manufacturer name,
      - iv. Therapeutic class,
      - v. Drug strength,
      - vi. Period of bid (year, multi-year, etc.),
      - vii. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
      - viii. The Centers for Medicare and Medicaid Services (CMS) rebate,
      - ix. The current supplemental rebate if there is one,
      - x. The current state net price, and
      - xi. The previous past period bid(s).
    - b. Presents the bid update formula showing a percent of WAC or other agreed upon price or a guaranteed net price (GNP).
    - c. Presents all information for all offer tiers.

- d. Reports factors and/or conditions and any identified related impact during the Rebate Calendar Year on the individual bid update proposal(s).
  - e. Provides relevant offer comments.
  - f. Provides option for reviewer input of notes/comments/responses.
  - Produced for Member States and their agents and/or staff.
  - Produced for Member States' program planning purposes.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to the bid solicitation vehicle; a database capturing and compiling bids; a secure web based "cloud" service or electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
  - Produced weekly during the rebate calendar year bid year negotiations unless otherwise approved by the Member States.
  - Produced weekly if mid-year bids procured unless otherwise approved by the Member States.
13. Bid selection/rejection report(s)
- Identifies proposals as rejected or accepted by each Member State. If approved by the Member States, may include proposals where the final determination has not been made.
    - a. Presents the bids by agreed upon class sorted in alphabetical or agreed upon order and includes:
      - i. Drug name,
      - ii. National Drug Code (NDC), or other mutually agreed upon code identifier,
      - iii. Manufacturer name,
      - iv. Therapeutic class,
      - v. Drug strength,
      - vi. Period of bid (year, multi-year, etc.),
      - vii. The Wholesale Acquisition Cost (WAC) or other agreed upon price,
      - viii. The Centers for Medicare and Medicaid Services (CMS) rebate,
      - ix. The current supplemental rebate if there is one,
      - x. The current state net price, and
      - xi. The previous past period bid(s).
    - b. Presents the formula showing a percent of WAC or other agreed upon price or a guaranteed net price (GNP).
    - c. Presents all information for all offer tier(s).
    - d. Identifies the best and final offer (BAFO).
    - e. Reports factors and/or conditions and any identified related impact during the Rebate Calendar Year on the individual bid proposal(s).
    - f. Provides relevant offer comments.
    - g. Provides option for reviewer input of notes/comments/responses.
  - Produced for Member States and their agents and/or staff.
  - Produced for rebate calendar year bid year.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to the bid solicitation vehicle; a database capturing and compiling bids; a secure web based "cloud" service or electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.



- On rejected offers, produced monthly after the close of annual or mid-year bidding negotiations unless otherwise approved by the Member States.
  - On accepted offers, produced as approved by the Member States.
14. Member States' activity report
- Documents dates and steps taken on individual and collective proposals (e.g., offers, counter offers, final offers, etc.).
  - Produced for Member States and their agents and/or staff.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to the bid solicitation vehicle; a database capturing and compiling bids; a secure web based "cloud" service or electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
  - Produced for bid year no more than one month after the conclusion of annual or mid-year bidding negotiations.
15. Bid summary report
- Documents steps taken on individual and collective proposals (e.g., offers, counter offers, final offers, etc.).
  - Produced for Member States and their agents and/or staff.
  - Produced in a format approved by the Member States. Must be a paper report in Microsoft Office Excel format. Must be available electronically; for example, via access to the bid solicitation vehicle; a database capturing and compiling bids; a secure web based "cloud" service or electronic bulletin board to provide access to data files, etc. Must be available to Member State agents as well as staff.
  - Produced for bid year no more than one month after the conclusion of annual or mid-year bidding negotiations.
16. Manufacturer non-participation report
- Identifies contacts attempted where manufacturers opted not to participate.
  - Documents steps taken and results (e.g., unable to contact, mail returned to sender, refused to participate, etc.).
  - Produced for Member States and their agents and/or staff.
  - Produced:
    - a. With the preliminary bid report.
    - b. At the end of any bid negotiations, no more than two weeks after their conclusion.
17. New drug tracking report:
- Identifies new drugs available:
    - a. Drug name,
    - b. Date drug available,
    - c. Therapeutic class and if class is managed,
    - d. Manufacturer name,
    - e. Supplemental rebate agreement(s) with the manufacturer,
    - f. If and when manufacturer contacted,
    - g. Manufacturer response,
    - h. Date any rebate offered,
    - i. Date any rebate offered to Member States, and
    - j. State responses.
  - Produced for Member States and their agents and/or staff.
  - Produced as frequently as twice a week when there is information to report.

Actual report formats shall be proposed by the Contractor and shall be subject to the approval of the Member States. With the understanding that the expectation is that the purpose of the listed report must be met, the Contractor's format proposals may include adding or combining reports, reporting required elements in multiple and/or different reports, and adding elements and features to reports.

Modifications to approved reports may be required over the term of the contract. Some reports may be requested more frequently than specified. Additional reports may be expected.

Reports shall be produced using Microsoft Office Word or Excel unless otherwise specified here or approved by the Member States. Reports must be formatted for printing. Reports must be supplied via e-mail or through a secure web based "cloud" service or electronic bulletin board unless otherwise specified.

The Contractor shall make available to individual Member States enhanced reporting services support to provide customized state-specific reporting over and above the reporting described here. No state is obligated to choose this. A fee may apply if a state selects this option. See Attachment B, V, 2.

**ix. Meetings**

The Contractor shall be able to organize, coordinate, support, and manage meetings of all types including annual bid year, mid-year, periodic, and as needed meetings. Generally, it is not expected that the Contractor will be required to meet at the location of any Member State. However, the Contractor shall be expected to host the annual meeting for bid presentation. At the discretion of the Member States, this meeting may be in the state where the Contractor is located or in one of the Member States. The Contractor shall be responsible for necessary meeting costs: facility, communications, connectivity, materials, etc. The Contractor shall also be responsible for all of its staff's expenses for attending that meeting. It is expected that no more than three members of the Contractor's staff shall need to attend a meeting.

**x. Other SSDC rebate pool management activities**

The Contractor shall be responsible for tracking and monitoring manufacturer/drug participation in the SSDC in relationship to drugs/pharmacy benefits represented in the SSDC Member States' PDLs.

The Contractor shall be responsible for identifying the detailed impact of factors and/or conditions that apply to SSDC Member State rebate programs that become known to Member States at any point in the course of a Rebate Calendar Year; for example, anticipated federal law/rule changes; generic and/or brand drug developments; known litigation; etc. In doing so, the Contractor shall be responsible for researching the conditions of the event(s) to report known elements: what is happening, to which state(s) it applies, where it applies, when it is likely to be effective, and what is known about how it is likely to occur. Ultimately, the Contractor shall be responsible for determining, to the extent possible, the per unit/per NDC or other product identifier effect of any event and reporting it to the Member States so that they are able to apply the per unit/per NDC or other product identifier effect to their individual utilization data.

The Contractor may be asked to do other related duties of this type during the term of the Contract.

**xi. Confidentiality of manufacturer agreement information**

The Contractor shall assure that the terms and conditions of manufacturer agreements are not disclosed inappropriately. The Contract shall fully comply with the conditions of Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) which apply to Medicaid supplemental rebates as well as federal OBRA'90 rebates.

**xii. Ownership of data, deliverables, and reports**

The Contractor shall agree that any and all data provided to it by the SSDC or any of its Member States or their agents and/or collected, created, summarized, and/or aggregated for the SSDC or any of its Member States; deliverables submitted to the SSDC or any of its Member States; and reports created under this contract, are the property of the SSDC and its Member States, intended solely for the purpose of supporting the SSDC in any manner deemed appropriate by the SSDC. None of these data or materials may be used by the Contractor at any time or in any manner without the express approval of the SSDC.

**xiii. Disaster recovery**

In the event of natural or unnatural disasters, including but not limited to hacking and acts of terrorism, the Contractor shall have a procedure for assuring that all pieces of work related to this contract are stored in multiple manners so that it may be accessed in the event of such a disaster. For example, backup files shall be created on such things as Member State utilization compilations; rebate calendar year bid histories; contract details; factor/condition compilations; etc. as well as letter template files; spreadsheets; web page source files; etc. The Contractor shall provide a disaster recovery and business continuity plan for review of the SSDC Member States no later than the effective date of this contract. The Contractor shall provide a final disaster recovery and business continuity plan for the approval of the SSDC Member States no later than fifteen (15) days following transmittal of the SSDC's review comments.

**xiv. Post implementation**

The Contractor shall be responsible for routine procedure and system maintenance in support of all aspects of operations described in the Work Statement. Changes in operations that impact on the General Deliverables of this contract are subject to the review and approval of the SSDC Member States.

**xv. End of contract transition plan**

It shall be expected that in the final year of this contract, the SSDC will release a RFP to secure a new contract for rebate procurement. In the event that a new contractor is selected, the SSDC shall require that **all** notebooks, plans, working papers, documents, materials, records, data, documentation, other work, and other items developed and produced under this contract, that are related to specific deliverables under this contract, be transitioned to the new contractor.

To the extent possible, the details of the known terms and conditions of this transition will be established at the time of the finalization of this contract. These terms and conditions may be amended over the period of the contract. At a minimum, no less than ninety days prior to the end of this contract, the Contractor will provide the following related to the final rebate calendar year

negotiated by the Contractor:

- A copy of the schedule of events in the procurement of rebates for the last rebate calendar year.
- A copy of the last approved request for rebate proposals.
- Any authorization required for the use of the SSDC web page address of [www.rxssdc.org](http://www.rxssdc.org) or any SSDC specific web page developed during the term of this Contract.
- An electronic copy of the last approved version of the contents of each page of the SSDC web page.
- A binder including a copy of the last version of the reports found in Subsection III, F, viii of this Attachment, as otherwise agreed to in the finalization of this contract, and as otherwise agreed during the term of this contract.

With notification of the selection of a new contractor, this contract's Contractor will be notified of the SSDC expectations regarding final document and data disposition including the SSDC's expectations regard any retention period.

#### **IV. PERFORMANCE STANDARDS – Please refer to Attachment A – Appendix I.**

#### **V. CONTRACT MONITORING REQUIREMENTS**

The Contractor recognizes that the State and SSDC Member States will monitor the implementation, operations, and results and outcomes of this contract.

All records or information captured and compiled in this contract must be maintained for inspection and evaluation as described in Attachment C, #10.

#### **VI. AFFILIATIONS**

The Contractor shall report to the State all affiliations that may affect the performance of its duties under the Contract. This report shall occur as the Contractor enters into any such affiliation during any portion of the term of the Contract.

In addition, at the execution of this contract and annually on the anniversary of this contract, the Contractor shall submit a declaration regarding Title 33 V.S.A § 2001. In connection with Vermont's pharmacy best practices and cost containment program, this requires that DVHA shall not enter into a contract with a contractor where the contractor has entered into an agreement or engaged in a practice described here unless the Commissioner of DVHA determines and certifies in a required fiscal report to the Vermont General Assembly, that such agreement or practice furthers the financial interests of Vermont, and does not adversely affect the medical interests of Vermont beneficiaries. This requirement applies to any contractor that provides pharmacy benefit manager related services.

The required declaration addresses each of the items listed below. The Contractor shall identify any agreement entered into related to each item and disclose the financial impact of such agreements on Vermont and on Vermont beneficiaries. This shall be in the form of a letter addressed to the Contract Administrator and signed by an individual in the Contractor's company authorized to provide this information. This should be provided in a manner that preserves the confidentiality of any proprietary information as determined by the Director of OVHA.

- Any agreement with a pharmaceutical manufacturer to favor the manufacturer's products over a competitor's products, or to place the manufacturer's drug on the State's preferred list or formulary, or to switch the drug prescribed by the patient's health care provider with a drug agreed to by the Contractor and the manufacturer;
- Any agreement with a pharmaceutical manufacturer to share manufacturer rebates and discounts with the Contractor, or to pay "soft money" or other economic benefits to the Contractor;
- Any agreement or practice to bill Vermont health benefit plans for prescription drugs at a cost higher than the Contractor pays the pharmacy;
- Any agreement to share revenue with a mail order or internet pharmacy company;
- Any agreement to sell prescription drug data concerning Vermont beneficiaries, or data concerning the prescribing practices of the health care providers of Vermont beneficiaries; or
- Any other agreement of the Contractor with a pharmaceutical manufacturer or with wholesale and retail pharmacies affecting the cost of pharmacy benefits provided to Vermont beneficiaries.

## **VII. STATE RESPONSIBILITIES**

While the Contractor shall perform the duties of this contract for all SSDC Member States, the State shall assume the following responsibilities with regard to this contract:

- A. Designate a Contract Administrator to represent the State and the SSDC in all matters pertaining to the contract, including monitoring Contractor compliance with contract terms, monitoring Contractor's progress, resolving issues between the Contractor and SSDC Member States and/or their contracted resources, and resolving issues related to program implementation and operation.
- B. Notify the Contractor in a timely manner of all pertinent changes in DVHA and SSDC policy, procedures or operational systems that affect or depend upon Contractor operations or activities.
- C. Provide the Contractor, in a timely manner, any information regarding SSDC Member State or federal regulations, policies or statutes, or changes thereof, which are relevant to the Contractor's performance.
- D. Provide Contractor with information and otherwise assist Contractor in responding to complex inquiries regarding SSDC Member State policies.
- E. Provide coordination services between the Contractor and the SSDC Member States and/or their contracted resources related to electronic data exchanges and their frequency schedules, transmission methods, and file formats and specifications as defined by the SSDC Member States and the Contractor.
- F. Provide technical assistance in resolving problems associated with data exchanges between the Contractor and the SSDC Member States or their contracted resources.
- G. Provide the Contractor any other information that the State deems relevant in order to fulfill the duties required by this contract.
- H. Reimburse the Contractor on a monthly basis in accordance with procedures defined in the contract, upon receipt of a properly completed invoice.

**Attachment A - Specifications of Work to be Performed**  
**Appendix I: Performance Standards & Operational Metrics: SSDC Collective Services**

	<b>Requirement</b>	<b>Standard</b>	<b>Report</b>
1.	Appropriately represent the SSDC as a state administered supplemental rebate pool and not represent in any way or manner that the SSDC is owned by the Contractor.	The Contractor shall assure that the SSDC supplemental rebate pool is represented in all oral and written presentations as the SSDC's pool, not the Contractor's pool. All public presentations and materials have to be approved in advance by the Contract Administrator. Materials requiring approval must be submitted at least 7 days in advance of presentations.	As specified in the standard.
2.	Accept no compensation of any type from manufacturers or their representatives in the course of SSDC dealings.	Annually, the Contractor shall provide a written disclosure statement as required by the State of Vermont under V.S.A Title 33, Chapter 19, Subchapter V, § 2001 regarding its corporation, its employees, and/or any subcontractor providing services under this contract.	Statement due as of the effective date of this contract and as of April 1 <sup>st</sup> of each contract year, thereafter.
3.	Establish and maintain good working relations with manufacturers and their representatives.	The Contractor shall report to the Contract Administrator any manufacturer participating in any year of this contract that subsequently refuses to participate and the reasons for the non-participation. The Contractor shall report to the Contract Administrator on a semi-annual basis regarding significant complaints from manufacturers and the Contractor's response to those complaints. Significant is defined as any complaint that may jeopardize an existing or potential manufacturer rebate agreement.	Report due as of the effective date of this contract regarding past relations. Thereafter, due as of April 1 <sup>st</sup> of each calendar year prior to the onset of negotiations for the next bid calendar year and as of February 1 <sup>st</sup> of each calendar year, one month after the implementation of that bid calendar year's agreements.
4.	Comply with requirements for SSDC approval of policy, process, strategy, documents, materials, and/or content.	All materials proposed for distribution or internet posting must be approved by the Contract Administrator. Materials requiring approval must be submitted at least 7 days in advance of distribution or posting.	As specified in standard.
5.	Work with any agent designated by a Member State.	As specified in the requirement.	Upon notice of a perceived event by the Contract Administrator, report details from the perspective of the Contractor including any

			justification. Report steps taken to resolve any issues identified by the Contract Administrator within 7 days of notice.
6.	Support Member States in the SSDC equally in the requirements of this Contract.	As specified in the requirement.	Upon notice of a perceived event by the Contract Administrator, report details from the perspective of the Contractor including any justification. Report steps taken to resolve any issues identified by the Contract Administrator within 7 days of notice.
7.	Maintain a SSDC specific web page.	The SSDC web page must be maintained in compliance with requirements for SSDC approval of policy, process, strategy, documents, materials, and/or content. All materials proposed for internet posting must be approved by the Contract Administrator. Materials requiring approval must be submitted at least 7 days in advance of posting.	As specified in standard.
8.	Assure web page is available for general purposes during agreed upon normal business hours on normal business days. The web page may be unavailable while being serviced for agreed upon periods of time.	The SSDC web page shall be available from 8 a.m. until 4:30 p.m. Eastern Time Monday through Friday except for federal holidays and Maine state holidays. The Contract Administrator shall be notified 7 days in advance if the web page will be unavailable due to scheduled servicing for a period of more than 15 minutes.	Report due monthly of web page downtime and reason(s).
9.	Manage all incoming and outgoing communications for the SSDC by telephone, electronically, and/or with varied "mailing" options.	The Contractor shall maintain the capacity to manage incoming and outgoing communications through customer orientated telephone response systems, mass mailings, fax blasts to identified audiences, fax responses, email groups, and web-based communications.  Any report generated from data warehouses listing the planned recipients of communications shall be reviewed for accuracy and intended audience. The Contractor shall spot check any mass communication for possible errors. Any significant error identified in a mass communication subsequent to distribution shall be reported to the Contract Administrator within 1 hour of it being identified.	As specified in standard.
10.	Provide single point of contact to all Member States during agreed upon normal business hours on	The Contractor shall designate a telephone contact and provide an email address to the Contract Administrator prior to the effective date of the	Designation due as of the effective date of this

	normal business days.	<p>contract. The Contractor shall identify any changes in contact 2 weeks prior to change. In the event of unusual circumstances beyond the Contractor's control that result in the Contractor being unable to notify the Contract Administrator 2 weeks prior to a change, the Contractor will notify the Contract Administrator immediately with a written explanation of the circumstances that justifies any notice of less than 2 weeks.</p> <p>The Contractor shall assure the availability of a backup contact at all times. If a backup is necessary for more than 2 working days, the Contractor shall notify the Contract Administrator of the backup plan. The Contractor must assure that the contact or a backup shall be available from 8 a.m. until 4:30 p.m. Eastern Time Monday through Friday except for federal holidays and Maine state holidays.</p>	contract and as required thereafter.
11.	Provide timely response to Member States and their staffs within 2 business days.	The Contractor shall provide a telephone/email monthly response report that identifies any occasion where a timely response has not occurred within 2 business days. The report shall identify the date of initial Member State contact, the date of the actual response, and the justification for the delay.	Report due no later than 15 days after the end of the report month.
12.	Provide telephone and e-mail points of contact for manufacturers during agreed upon normal business hours on normal business days.	<p>The Contractor shall designate a telephone contact and email address for manufacturers. This information shall be provided to the Contract Administrator prior to the effective date of the contract. The Contractor shall identify any changes in the contact 2 weeks prior to change or provide a written explanation of the circumstances that justifies any notice of less than 2 weeks.</p> <p>The Contractor shall assure the availability of a backup contact at all times. If a backup is necessary for more than 2 working days, the Contractor shall notify the Contract Administrator of the backup plan. The Contractor must assure that the contact or a backup shall be available from 8 a.m. until 4:30 p.m. Eastern Time Monday through Friday except for federal holidays and Maine state holidays.</p>	Designation due as of the effective date of this contract and as required thereafter.
13.	Provide timely response to manufacturer contacts within 2 business days.	The Contractor shall provide a telephone/email monthly response report that identifies any manufacturer where a timely response has not occurred within 2 business days. The report shall identify the date of initial manufacturer contact, the date of the actual response, and the justification for the delay.	Report due no later than 15 days after the end of the report month.
14.	Provide process training to the staff and agents of Member States.	Provide process training to the staff and agents of Member States new to the SSDC and staff and agents new to Member States. If necessary,	As specified in standard.



		<p>provide yearly update training to existing staff and agents of Member States.</p> <p>Training must occur no later than 15 days after the onset of the rebate calendar year bid year solicitation.</p>	
15.	Produce Member State utilization report for bid year solicitation.	Provide the utilization report as identified in Attachment A, III, F, viii to compare Member State utilization for bid year proposal review.	<p>Report(s) produced as specified in Attachment A, III, F, viii.</p> <p>Provided no later than April 1st of the previous calendar year unless otherwise approved by the Member States.</p>
16.	Produce compilations of potential member states utilization data.	Produce compilations of potential member states utilization data for purposes of evaluating rebate opportunities.	<p>Provide data in a Microsoft Excel format.</p> <p>Data must be provided within 2 work weeks of request.</p>
17.	Initiate rebate year/bid year rebate solicitation.	The Contractor shall propose a schedule annually for activities for the bid year. This schedule shall be submitted to the Contract Administrator for approval.	<p>Provide bid year schedule of activities no later than the effective date of the contract and March 15<sup>th</sup> of each calendar year thereafter.</p> <p>Begin solicitation for any bid year no later than April 1st of the previous calendar year.</p>
18.	Provide a vehicle to allow manufacturers to submit bids in a minimum 30-day time frame.	<p>Manufacturers shall be provided with a minimum of a 30-day time frame to bid. To support this, the Contractor shall:</p> <ul style="list-style-type: none"> <li>a. Contact the major manufacturers' negotiators each calendar year to start the bidding process for the bid year; that is, the next calendar year.</li> <li>b. Conduct pre-bid meetings with active manufacturers where requested.</li> <li>c. Provide any invitation to bid letters to Member States should states</li> </ul>	Report any manufacturer participating in the current rebate calendar year who does not submit a proposal for the bid year within the 30 day time frame. Report no later

		<p>wish to post them on state websites.</p> <p>d. Mail solicitations out to all drug manufacturing companies as listed on the current quarter's CMS Participating Manufacturer Contact file. Notices shall be sent to all three contacts listed: legal, technical and invoicing.</p> <p>e. Send notifications to manufacturers who have registered with the SSDC for either of the past two review periods.</p> <p>f. Use all other methods available to solicit bids, including maintaining a manufacturer information database that can be used to generate letters and to produce notifications via email to invite bids and provide notice of website User Guides.</p> <p>g. Send notices to manufacturers informing them when they can begin entering rebate offers on the SSDC website.</p> <p>h. Monitor bids during the bid cycle to identify manufacturers with current agreements who have not yet submitted a bid for the current bid year solicitation.</p> <p>i. Continuously compare submitters from prior bid years and those of the current bid year to identify any past participants who have not yet accessed the website and determine reasons; e.g., due to personnel changes, departmental movement, etc. and attempt to address problems.</p>	<p>than 5 working days after the 30 day time period, indicating estimated impact of any "no bid" and any recommendation for further solicitation.</p>
19.	<p>Compile bid proposals during the bid year procurement period and make them available to Member States as referenced in Attachment A, III, F, viii.</p>	<p>The Contractor shall manage the SSDC website to allow Member State designated users to review real time bids as they are submitted to the database. The Contractor shall provide a Member State User Manual for the website.</p> <p>The Contractor shall:</p> <p>a. Prepare a presentation that shows the rebate bids distributed with all other drugs in the same agreed upon class, including without supplemental rebate offers, such as generics.</p> <p>b. Prepare a second presentation limited to those drugs with valid offers.</p> <p>The Contractor shall present the bids as specified in A, III, F, viii.</p>	<p>Real time access to individual drugs through the SSDC website.</p> <p>Report(s) produced as specified in A, III, F, viii.</p>
20.	<p>Compile complete bid proposals at the end of the bid year procurement period and make them available to Member States as referenced in Attachment A, III, F, viii.</p>	<p>The Contractor shall present the bids as specified in A, III, F, viii.</p>	<p>Real time access to individual drugs through the SSDC website.</p> <p>Report(s) produced as</p>

			specified in A, III, F, viii.
21.	Compile bid proposals made outside the rebate calendar year bid year procurement period and make them available to Member States as referenced in Attachment A, III, F, viii.	<p>The Contractor shall manage the SSDC website to allow Member State designated users to review real time bids as they are submitted to the database. The Contractor shall provide a Member State User Manual for the website.</p> <p>The Contractor shall notify the Member States of bid proposals made outside the rebate calendar year bid year procurement period within one week of receipt.</p> <p>The Contractor shall present the bids as specified in A, III, F, viii.</p>	<p>Real time access to individual drugs through the SSDC website.</p> <p>Report(s) produced as specified in A, III, F, viii.</p>
22.	Compile bids for formal presentation to Member States as referenced in Attachment A, III, F, viii.	The Contractor shall present the bids as specified in A, III, F, viii.	<p>Real time access to individual drugs through the SSDC website.</p> <p>Report(s) produced as specified in A, III, F, viii.</p>
23.	Complete negotiations after formal presentation and review by the Member States.	<p>The Contractor shall:</p> <ul style="list-style-type: none"> <li>a. Contact manufacturers where a Member State or Member States require drug specific negotiations.</li> <li>b. Negotiate the drug specific requests at the direction of the state(s).</li> </ul>	Complete negotiations no later than fourteen (14) days after the Member State bid presentation unless otherwise approved by the Member States affected.
24.	Compile bid selections for Member States and their staff.	<p>The Contractor shall provide a website database to include:</p> <ul style="list-style-type: none"> <li>a. the initial bid submitted on each NDC,</li> <li>b. any manufacturer's counteroffer response, and</li> <li>c. any BAFO responses.</li> </ul> <p>The Contractor shall also provide a summary spreadsheet report as referenced in Attachment A, III, F, viii of all offers and rebate formulas, including the final status of either "accepted" or "rejected" for every submitted bid.</p> <p>The Contractor shall provide complete documentation of all rebate procurement activities related to the final bid selections when requested.</p>	Report(s) produced as specified in A, III, F, viii.
25.	Notify manufacturers of the final disposition of their	The Contractor shall provide manufacturers email notification on each of	As specified in standard.

	supplemental rebate offers.	<p>their offers.</p> <p>The Contractor shall provide a mechanism to assure that the manufacturer received the notification.</p> <p>Notifications must be completed no later than 7 days after the final disposition determination.</p>	
26.	Produce Member State SSDC rebate program reports within agreed upon time frames.	Provide the standardized administrative reports not otherwise listed in this Appendix but identified in Attachment A, III, F, viii according to the specifications and in the time frames designated.	As specified in standard.
27.	Assure that manufacturer bid details are not disclosed to any individual/organization/company/manufacturer without the express permission of the Member States.	<p>Contractor shall submit an information/data security plan to the Contract Administrator prior to the effective date of this contract and shall annually or upon request notify the Contract Administrator of any amendments to that plan.</p> <p>The plan shall include:</p> <ul style="list-style-type: none"> <li>a. Assurances that manufacturer bid details are not disclosed to any individual/organization/company/manufacturer without the express permission of the Member States,</li> <li>b. Description of how access to manufacturer bid details is limited to only properly trained staff members,</li> <li>c. Requirements for property (servers, tapes, etc.) to be locked and/or otherwise secured, and</li> <li>d. A requirement for maintenance of the Contractor's required levels of security.</li> </ul>	As specified in standard.
28.	Prepare a disaster recovery plan and business continuity plan.	<p>The Contractor shall:</p> <ul style="list-style-type: none"> <li>a. Prepare a disaster recovery and business continuity plan in preparation for the implementation of this contract. Provide for review of the SSDC Member States by the effective date of this contract.</li> <li>b. Provide a final disaster recovery and business continuity plan for the approval of the SSDC Member States no later than fifteen (15) days following transmittal of the SSDC's review comments.</li> <li>c. Provide updates as changes occur or upon request</li> </ul>	As specified in the standard.
29.	Assure backups of SSDC information and data no less than weekly.	<p>The Contractor shall include in its disaster recovery plan and business continuity plan:</p> <ul style="list-style-type: none"> <li>a. Assurances of backups of SSDC information and data at least weekly.</li> <li>b. All policies related to the backup and restoration of data, backup</li> </ul>	As specified in the standard for #28.

		power supplies, redundant systems, offsite facilities, potential scenarios, and the procedures to follow in the event of a disaster.	
30.	Recognize that all notebooks, plans, working papers, documents, materials, records, data, documentation, other work, and other items developed and produced under this contract, that are related to the specific deliverables under this contract, are owned by the SSDC.	<p>With the understanding that that any tools used by the Contractor to provide the services identified in this contract are owned by the Contractor, the Contractor shall:</p> <ul style="list-style-type: none"><li>a. Provide a signed statement recognizing that all notebooks, plans, working papers, documents, materials, records, data, documentation, other work, and other items developed and produced under this contract that are related to the specific deliverables under this contract are owned by the SSDC.</li><li>b. Agreeing that all specified materials must be turned over to the SSDC upon request at any time.</li></ul>	<p>As specified in the standard.</p> <p>Statement due as of the effective date of this contract.</p>
31.	Commit to an end of contract transition plan with a known terms and conditions plan created with the implementation of this contract and amended over the period of the contract.	<p>The Contractor shall:</p> <ul style="list-style-type: none"><li>a. Provide a proposed Transition Plan based on known terms and conditions for review of the SSDC Member States no later than thirty (30) days after the effective date of this contract.</li><li>b. Provide a final proposed Transition Plan for the approval of the SSDC Member States no later than thirty (30) days following transmittal of the SSDC's review comments.</li><li>c. Report annually or upon request any amendments to that plan.</li></ul>	<p>As specified in the standard.</p>

**ATTACHMENT B  
PAYMENT PROVISIONS**

**I. SERVICES PROVIDED TO THE SSDC**

The SSDC Member States believe that components of their supplemental drug rebate program could be broadly defined as:

- Member States' utilization data compilation: Compilation of Member States' produced drug utilization data for Member State information and use, for presentation to manufacturers as part of the annual rebate bid procurement, and for use in bid presentation and evaluation.
- Rebate bid solicitation for annual review and as needed: Creation of a bid solicitation process including the provision of the vehicles(s) for manufacturers to submit bids. Communication with manufacturers throughout the process including but not limited to the web posting of general requests for proposals, manufacturer specific requests for proposals, and responses to manufacturers' questions.
- Bid presentation at the SSDC annual meeting and as needed: Provision for state review of a compilation of offered rebate bids with pertinent related conditions, factors, and/or information.
- Bid review: Review of offered rebate bids by states collectively and individually to determine what best meets the needs of select and/or individual states.
- Rebate bid negotiation annually and as needed: Negotiation that may occur at the request of a state or states after any bid review.
- Bid selection: State specific selection(s) within drug classes.
- Bid selection notification: Notifications to manufacturers.
- General collective administrative functions: Including but not limited to the creation and maintenance of a web page to provide manufacturers and others with pertinent information about the SSDC; general communications with participating states, manufacturers, and others; notification to manufacturers of changes in Member State participation during agreement year(s); data development, analysis and reporting; data compilation and distribution; manufacturer participation tracking; drug representation tracking; and meeting organization, coordination, support, and management.
- Contract finalization: Execution of contracts using each state's rebate contract format.
- Preferred drug list (PDL) development: Development of state specific PDLs.
- Clinical management development: Development of state specific clinical criteria in support of each state specific PDL.
- Contract management: Management of the terms and conditions of each state's executed rebate contracts.
- PDL management: Oversight of each state's PDL.
- Clinical management: Clinical support of the state specific criteria including but not limited to prior authorization.

- Rebate billing: State specific billing.
- Rebate dispute resolution: State specific rebate dispute management.
- Rebate collections and reporting: State specific collections and reporting.

The SSDC believes that the **sole collective services** shared by all of its Member States are supplemental drug rebate bid procurement and the services necessary to support it. These are:

1. Member States' utilization data compilation.
2. Rebate bid solicitation for annual review and as needed.
3. Bid presentation at the SSDC annual meeting and as needed.
4. Rebate bid negotiation annually and as needed.
5. Bid selection notification.
6. General collective administrative functions.

These six **sole collective services** are the services to be provided under the terms and conditions of this contract.

Additional components of Member States supplemental drug rebate programs are provided under this contract. As of the effective date of the contract they include:

1. Services necessary to incorporate a new state into SSDC operations.
2. Optional state-specific enhanced reporting services support.

Future services may be allowed subject to mutual agreement by all parties.

The Contractor shall be responsible for services to the SSDC under this contract as of April 1, 2015. The Contractor will be responsible for supporting rebate agreements for calendar year 2015 including those negotiated prior to April 1, 2015 and for all agreements beginning rebate calendar year 2016 and later.

## **II. SERVICE COST FEES**

The fees are effective through the initial two (2) contract year base Contract period and the two (2) extension contract years should that option for extension apply. Amounts referenced apply for a period of up to four (4) contract years from the date that the Contract becomes effective.

## **III. FEES FOR COLLECTIVE SERVICES**

Fees for the cost of SSDC collective services apply monthly as identified in the grid in this section.

The monthly reimbursement for the collective services is reflected in the identified service types. While the service activity varies over the course of the contract year, the costs are distributed

throughout the year resulting in a single fee per service type per month regardless of the level of activity in any specific month.

The monthly amounts listed do not change regardless of the number of Member States that may participate in the Sovereign States Drug Consortium over the course of the Contract. Member States share in the monthly Contract costs in relation to the twelve months of Contract activity that generates rebates for a rebate calendar bid year. Member States share equally in the costs for the number of months for which each State receives rebates. For example, if a state receives rebates for all twelve months of the rebate calendar year, they share in all twelve months of the Contract costs but if a state only receives rebates for the last six months of the rebate calendar year, they share in the last six months of the Contract year's costs.

For services related to rebate calendar year 2015, the Contractor shall be responsible for services to the SSDC under State of Vermont contract #19364 through March 31, 2015 and shall be responsible for them under this contract beginning April 1, 2015.

The fee per service type per month listed in this section applies for services beginning April 1, 2015.



**Monthly Payment Grid for Sovereign States Drug Consortium Collective Services Related to Medicaid Supplemental Drug Rebates and Other Medicaid Pharmacy Benefit Rebates**

<i>Service Type</i>	<i>Total Monthly Fee</i>
Member States' utilization data compilation	\$ 1,191.31
Rebate bid solicitation for annual review and as needed	\$ 595.66
Bid presentation at an annual meeting and as needed	\$ 595.66
Rebate bid negotiation annually and as needed	\$ 1,191.31
Bid selection notification	\$ 297.83
Administration functions: web page creation and maintenance	\$ 595.66
Administrative functions: general communications (mail, e-mail, fax, and telephone) with participating states, manufacturers, and others	\$ 595.66
Administrative functions: staff process training and support	\$ 297.83
Administrative functions: manufacturer communications on the SSDC, the rebate process, manufacturer participation and drugs, changes in Member State participation during agreement year(s), and other related subjects	\$ 893.49
Administrative functions: data development, analysis and reporting with standard and decision support capabilities	\$ 1,191.31
Administrative functions: data compilation and distribution by paper and/or electronically including preparation and production	\$ 595.66
Administrative functions: identifying, researching, analyzing, and reporting on factors and/or conditions impacting on specific rebates	\$ 1,489.14
Administrative functions: drug representation tracking by state and collectively	\$ 595.66
Administrative functions: meeting organization, coordination, support, and management	\$ 1,786.97
Total	\$11,913.15

Monthly services may be billed on or after the first of the month following the month of service. The Contract Administrator shall review bills and authorize payments.

Under this Contract, the total maximum amount payable for collective services for the two (2) contract year base Contract period is \$285,915.60.

#### **IV. RETAINAGE AGAINST FEES FOR COLLECTIVE SERVICES**

The Contractor agrees to a retainage of fifteen percent (15%) of the total contract amount. Retainage is intended to assure the complete and timely delivery of services under this contract.

Retainage only applies against costs for collective services. It does not apply to costs for any additional components.

The retainage amount applies to each year of the initial two (2) contract year base Contract period and the two (2) extension contract years should the option for extension apply.

The retainage will be withheld against monthly bills.

A bill to recover retainage amounts through September in a contract year will be accepted as of October 1<sup>st</sup> of that calendar year or upon satisfactory completion of the activities through September 30<sup>th</sup>, whichever is later. A bill to recover retainage through March in a contract year will be accepted as of April 1<sup>st</sup> of that calendar year or upon satisfactory completion of activities through March 31<sup>st</sup>, whichever is later.

Payments may be reduced to provide the SSDC with credits against the monthly administrative fee when specified performance standards and deadlines are not met as described in section VI of this Attachment.

#### **V. PAYMENTS FOR ADDITIONAL COMPONENTS**

Reimbursement for SSDC additional components are as follows:

1. A payment is allowable for membership accretion. It is due only as new states join the SSDC beginning April 1, 2015. An accretion fee is to cover costs for incorporating each state into operations. This accretion fee is a one-time charge per additional state. It is payable for each state other than Iowa, Maine, Mississippi, Oregon, Utah, Vermont, West Virginia, and Wyoming as it joins the SSDC beginning April 1, 2015. The allowable accretion fee is \$12,000 per Member State. The Contractor may opt to waive it.
2. A one-time payment is allowable if a Member State opts for enhanced reporting services support. This is to provide customized state-specific reporting over and above the SSDC reporting described in Attachment A, III, F, viii. No state is obligated to choose this. An established or new Member State may opt for it. The allowable one-time fee is \$4,200 per Member State.

The reimbursement for these additional components is not subject to retainage.

Under this Contract, the total maximum amount payable for membership accretion is \$36,000. This is for the two (2) contract year base Contract period and the two (2) extension contract years.

should the option for extension apply. The maximum amount is premised on the potential for no more than three (3) additional Member States. Any additional membership shall require a contract amendment.

Under this Contract, the total maximum amount payable for enhanced reporting services support is \$25,200. This is for the two (2) contract year base Contract period and the two (2) extension contract years should the option for extension apply. The maximum amount is premised on no more than six (6) existing and/or future Member States opting for this. A contract amendment shall be required if more than six (6) members opt for enhanced reporting services support over the term of the contract.

#### **VI. FEE CREDITS FOR FAILURES IN PERFORMANCE STANDARDS AND TIMELINES**

The Contractor agrees to abide by the Performance Standards and Timelines as set forth in Attachment A, Appendix I, of this Contract. The Contractor shall be at risk for a total of 10% of the total contract cost for failures in performance standards and timelines. Payments for agreed-upon fees for collective services may be reduced to provide the SSDC with credits against the monthly administrative fee when the standards and timelines are not met. The Contractor agrees to the standards and/or timelines outlined in the following grid and the fee credit that would apply in the event of a failure in those standards and/or timelines.

<b>Service</b>	<b>Standard and/or Timeline</b>	<b>Fee Credit</b>
<b>1. Member States' utilization data compilation</b>	<p>Produce compilations:</p> <ul style="list-style-type: none"><li>• By April 1 of the year prior to the rebate calendar year bid year unless otherwise approved by the Member States.</li><li>• Within 2 work weeks of request in the case of a potential Member State.</li></ul>	<p>If found to be out of compliance with an identified standard and /or timeline for this service, fee credit equal to 1% of that month's total administrative fee identified in B, III.</p>
<b>2. Rebate bid solicitation</b>	<ul style="list-style-type: none"><li>• Initiate solicitation no later than April 1 of the year prior to the rebate calendar year bid year unless otherwise approved by the Member States.</li><li>• Provide a vehicle to allow manufacturers to submit bids in a minimum 30-day time frame.</li></ul>	<p>If found to be out of compliance with an identified standard and /or timeline for this service, fee credit equal to 1% of that month's total administrative fee identified in B, III.</p>
<b>3. Rebate bid presentation</b>	<p>Provide Member States with a bid presentation no later than:</p> <ul style="list-style-type: none"><li>• Weekly in proposal form unless otherwise approved during rebate calendar year bid year cycle.</li></ul>	<p>If found to be out of compliance with an identified standard and /or timeline for this service, fee credit equal to 1% of that month's total administrative fee identified in B, III.</p>

	<ul style="list-style-type: none"> <li>• Produced no less than two weeks prior to the SSDC annual meeting to review bids unless otherwise approved by the Member States. May be limited to the bid information available at that time.</li> <li>• Produced in presentation form no less than one week prior to the SSDC annual meeting to review bids unless otherwise approved by the Member States.</li> <li>• 10 days after receipt for mid-year proposals.</li> </ul>	
<b>4. Rebate bid negotiation</b>	Complete negotiations no later than fourteen (14) days after the Member State bid presentation unless otherwise approved by the Member States.	If found to be out of compliance with an identified standard and /or timeline for this service, fee credit equal to 1% of that month's total administrative fee identified in B, III.
<b>5. Bid selection notification</b>	Notify manufacturers of the final disposition of their supplemental rebate offers no later than 7 days after the Member State acceptance/rejection.	If found to be out of compliance with an identified standard and /or timeline for this service, fee credit equal to 1% of that month's total administrative fee identified in B, III.
<b>6. General Administrative Functions</b>	<ul style="list-style-type: none"> <li>• Establish and maintain a SSDC specific web page subject to the approval of the Member States or their agent.</li> <li>• Provide timely response to Member State contacts within 2 business days.</li> <li>• Provide timely response to manufacturers contacts within 2 business days.</li> <li>• Provide necessary process training to Member State staff and agents no later than 15 days after the onset of the rebate calendar year bid year solicitation.</li> <li>• Produce Member State SSDC supplemental rebate program reports within agreed upon time frames</li> <li>• Provide a disaster recovery and business continuity plan in preparation for the implementation of the contract.</li> <li>• Perform weekly information and data backups.</li> </ul>	If found to be out of compliance with an identified standard and /or timeline for this service, fee credit equal to 5% of that month's total administrative fee identified in B, III.

	<ul style="list-style-type: none"><li>• Comply with the terms and conditions of the agreed upon end of contract transition plan.</li></ul>	
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At the discretion of the Contract Administrator, fee credits may apply for each instance of failure by the Contractor to meet the identified performance standard.

## VII. GENERAL PAYMENT TERMS AND CONDITIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for services specified in Attachment A, or services actually performed, up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days. Payments against this contract will be made within 30 days of the documented receipt of a correctly executed invoice. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. Contractor invoices shall be submitted no more frequently than monthly, but no later than quarterly, and shall include the service detail identified in this Attachment delivered during the specified billing period and the total amount billed.
2. No benefits or insurance will be reimbursed by the State.
3. Invoices should reference this contract number and be submitted electronically to both :

Karen Wingate  
Financial Director I  
Department of Vermont Health Access  
Access (DVHA)  
312 Hurricane Lane, Suite 201  
Williston, VT 05495  
[Karen.Wingate@state.vt.us](mailto:Karen.Wingate@state.vt.us)

Nancy Hogue, Pharm D  
Director of Pharmacy Services  
Department of Vermont Health  
Access (DVHA)  
312 Hurricane Lane, Suite 201  
Williston, VT 05495  
[Nancy.Hogue@state.vt.us](mailto:Nancy.Hogue@state.vt.us)

4. The total maximum amount payable under this contract shall not exceed \$347,115.60.
5. The State will remit all payments electronically as specified by the Contractor. The Contractor's payment point of contact shall be:

Brett Markum  
Goold Health Systems, an Emdeon company  
PO Box 572490  
Murray, UT 84157-2490

**ATTACHMENT C: STANDARD STATE PROVISIONS**

- 1. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
- 4. Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- 7. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence

\$1,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of \$\_\_\_\_\_ per occurrence, and \$\_\_\_\_\_ aggregate.

- 8. Reliance by the State on Representations:** All payments by the State under this Agreement

will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

- 9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- 10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

- 12. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

- 13. Taxes Due to the State:**

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services



within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**14. Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

**16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.

**18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

(End of Standard Provisions)

**ATTACHMENT D: MODIFICATIONS TO CONTRACT REQUIREMENTS AND ATTACHMENTS**

1. Business Associate Agreement

While the Department of Vermont Health Access commonly includes a Business Associate Agreement in all contracts, the Specifications of Work to be Performed as described in Attachment A of this Contract do not require the Contractor to have access to Medicaid beneficiary identifiers and their protected health information, pharmacy benefit prescribers, dispensing pharmacies or other enrolled Medicaid service providers. Should the Specifications of Work related to such personal beneficiary information change in the course of this contract, a contract amendment will be executed and an Attachment E (Business Associate Agreement) will be required.

2. Confidentiality of Drug Manufacturer Rebate Agreement Information

Attachment F, Section 3 specifies that Medicaid Program Contractors must support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*. Vermont requires that a Medicaid Program Contractor must implement and maintain during the term of the contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with compliance with National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards (NIST *Special Publication 800-53* (version 3 or higher) and *Federal Information Processing Standards Publication 200*).

As an alternative to meeting NIST standards, a System Organization Control (SOC) II or III annual audit was considered.

It has been determined that this Contract does not require automated data processing operations security. In addition, this Contract does not involve Medicaid program beneficiary personally identifiable information (PII) or personal health information (PHI). As a result, administrative, technical, and physical safeguards and controls do not need to be NIST compliant and a SOC II or III annual audit will not be required. However, in regards to Attachment A, Section III, Subsection F. xi., in assuring that the terms and conditions of manufacturer drug rebate agreements are not disclosed inappropriately in compliance with the conditions of Section 1927 of the Social Security Act (42 U.S.C. 1396r-8), the Contractor shall provide safeguards and controls regarding these terms and conditions that (i) ensure their security and confidentiality; (ii) protect against any anticipated security threats or hazards to their security or integrity; and (iii) protect against unauthorized access or use. Measures include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent the employees from providing the information to unauthorized individuals who may

seek to obtain it (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of the information in electronic form if in transit from GHS networks to external networks; (4) measures to store the information in a secure fashion including multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to the information; (6) measures to ensure that the information shall not be altered or corrupted without prior written consent from the State; (7) measures to protect against destruction, loss or damage due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring against intrusion on a twenty-four (24) hour a day basis of any portions of GHS' systems that are used in the provision of services related to the information.

### 3. Requirements on Medicaid Program Contractors

Attachment F, Section 3 specifies that Medicaid Program Contractors must support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*. Vermont requires that a Medicaid Program Contractor must implement and maintain during the term of the contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with compliance with National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards (NIST *Special Publication 800-53* (version 3 or higher) and *Federal Information Processing Standards Publication 200*).

It has been determined that this Contract does not require automated data processing and does not involve Medicaid program beneficiary personally identifiable information (PII) or personal health information (PHI). As a result, this requirement does not apply.

### 4. Intellectual Property/Work Product Ownership

Notwithstanding Attachment F, Section 10 for this Contract, or any other provision of this Contract, the Parties acknowledge that any software and/or services not developed in connection with this Contract to be provided by the Contractor in connection with this Contract shall be regarded as Software-As-A-Service, and shall not be subject to the foregoing assignment of ownership rights to the State of Vermont, with the proviso that the foregoing grant of royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the software and/or services remains in force and effect.

### 5. Price Protection

Attachment H, State of Maine Specific Contract Provisions, Rider B-IT Contract Terms, Section 45 regarding price protection applies to this Contract; that is, the Contractor shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or

better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to this Contract.

**6. Irrevocable Letter of Credit**

Attachment H, State of Maine Specific Contract Provisions, Rider B-IT Contract Terms, Section 46 regarding an irrevocable letter of credit does not apply to this contract.

**ATTACHMENT F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS**

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at [www.vermont211.org](http://www.vermont211.org)

3. **Medicaid Program Contractors:**

**Inspection of Records:** Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

**Subcontracting for Medicaid Services:** Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

**Medicaid Notification of Termination Requirements:** Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

**Encounter Data:** Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

**Federal Medicaid System Security Requirements Compliance:** All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three

months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.
5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.
7. **Privacy and Security Standards.**

**Protected Health Information:** The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

**Substance Abuse Treatment Information:** The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

**Other Confidential Consumer Information:** The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

**Social Security numbers:** The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.
10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.



11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services,

facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

**ATTACHMENT G**  
**STATE OF IOWA SPECIFIC CONTRACT PROVISIONS**

The State of Iowa's Special Terms and General Terms for Services Contracts are standard State of Iowa contract requirements. They are agreed to by Goold Health Systems Inc., an Emdeon Company as of April 1, 2015 as a condition this Contract. These terms supplement and are made a part of this Contract to which they are an attachment.

*Contractor Initials:* \_\_\_\_\_ *Vermont State Initials:* \_\_\_\_\_

**STATE OF IOWA**  
**CONTRACT PROVISIONS**  
**SECTION 1: SPECIAL TERMS**

**1.1-1.3.2 Reserved.**

**1.3.3 Monitoring, Review, and Problem Reporting.**

**1.3.3.1 Agency Monitoring Clause.** The Contract Manager or designee will:

- Verify Invoices and supporting documentation itemizing work performed prior to payment;
- Determine compliance with general contract terms, conditions, and requirements; and
- Assess compliance with Deliverables, performance measures, or other associated requirements based on the Contract.

**1.3.3.2 Agency Review Clause.** The Contract Manager or designee will use the results of monitoring activities and other relevant data to assess the Contractor's overall performance and compliance with the Contract. At a minimum, the Agency will conduct a review annually; however, reviews may occur more frequently at the Agency's discretion. As part of the review(s), the Agency may require the Contractor to provide additional data, may perform on-site reviews, and may consider information from other sources.

The Agency may require one or more meetings to discuss the outcome of a review. Meetings may be held in person. During the review meetings, the parties will discuss the Deliverables that have been provided or are in process under this Contract, achievement of the performance measures, and any concerns identified through the Agency's contract monitoring activities.

**1.3.3.3 Problem Reporting.** As stipulated by the Agency, the Contractor and/or Agency shall provide a report listing any problem or concern encountered. Records of such reports and other related communications issued in writing during the course of Contract performance shall be maintained by the parties. At the next scheduled meeting after a problem has been identified in

writing, the party responsible for resolving the problem shall provide a report setting forth activities taken or to be taken to resolve the problem together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. The Contract Owner has final authority to approve problem-resolution activities.

The Agency's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy. The Agency's inability to identify the extent of a problem or the extent of damages incurred because of a problem shall not act as a waiver of performance or damages under this Contract.

**1.3.3.4 Addressing Deficiencies.** To the extent that Deficiencies are identified in the Contractor's performance and notwithstanding other remedies available under this Contract, the Agency may require the Contractor to develop and comply with a plan acceptable to the Agency to resolve the Deficiencies.

**1.3.4 Reserved. (Contract Payment Clause)**

**1.3.4.1 Reserved. (Pricing)**

**1.3.4.2 Reserved. (Payment Methodology)**

**1.3.4.3 Timeframes for Regular Submission of Initial and Adjusted Invoices.** The Contractor shall submit an Invoice for services rendered in accordance with this Contract. Invoice(s) shall be submitted monthly. Unless a longer timeframe is provided by federal law, and in the absence of the express written consent of the Agency, all Invoices shall be submitted within six months from the last day of the month in which the services were rendered. All adjustments made to Invoices shall be submitted to the Agency within ninety (90) days from the date of the Invoice being adjusted. Invoices shall comply with all applicable rules concerning payment of such claims.

**1.3.4.4 Submission of Invoices at the End of State Fiscal Year.** Notwithstanding the timeframes above, and absent (1) longer timeframes established in federal law or (2) the express written consent of the Agency, the Contractor shall submit all Invoices to the Agency for payment by August 1<sup>st</sup> for all services performed in the preceding state fiscal year (the State fiscal year ends June 30) .

**1.3.4.5 Payment of Invoices.** The Agency shall verify the Contractor's performance of the Deliverables and timeliness of Invoices before making payment. The Agency will not pay Invoices that are not considered timely as defined in this Contract. If the Contractor wishes for untimely Invoice(s) to be considered for payment, the Contractor may submit the Invoice(s) in accordance with instructions for the Long Appeal Board Process to the State Appeal Board for consideration. Instructions for this process may be found at:  
[http://www.dom.state.ia.us/appeals/general\\_claims.html](http://www.dom.state.ia.us/appeals/general_claims.html).

The Agency shall pay all approved Invoices in arrears. The Agency may pay in less than sixty

(60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa law.

**1.3.4.6 Reimbursable Expenses.** Unless otherwise agreed to by the parties in an amendment or change order to the Contract that is executed by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor pursuant to this Contract. The Contractor shall be solely responsible for paying all costs, expenses, and charges it incurs in connection with its performance under this Contract.

**1.4 Insurance Coverage.**

The Contractor and any subcontractor shall obtain the following types of insurance for at least the minimum amounts listed below:

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers' Compensation and Employer Liability	As required by Iowa law	As Required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Professional Liability	Each Occurrence	\$2 Million
	Aggregate	\$2 Million

**1.5 Business Associate Agreement.** If the Contractor performs certain services on behalf of or for the Agency pursuant to this Contract that require the exchange of information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended, and the federal regulations published at 45 CFR part 160 and 164, the Contractor is the Agency's Business Associate and shall comply with this section. The Business Associate agrees to comply

with the Business Associate Agreement Addendum (BAA), and any amendments thereof, as posted to the Agency's website: <http://dhs.iowa.gov/HIPAA/baa>. This BAA, and any amendments thereof, is incorporated into the Contract by reference.

By signing this Contract, the Business Associate consents to receive notice of future amendments to the BAA through electronic mail. The Business Associate shall file and maintain a current electronic mail address with the Agency for this purpose. The Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: <http://dhs.iowa.gov/HIPAA/baa>, and providing the Business Associate electronic notice of the amended BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Agency of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Agency's notice referenced herein. Any agreed alteration of the then current Agency BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment that must be signed by the Business Associate, Agency Director, and the Agency Security and Privacy Officer.

***1.6 Qualified Service Organization.*** If the Contractor receives, stores, processes, or otherwise deals with confidential patient records from programs covered by 42 CFR part 2, the Contractor acknowledges that it is fully bound by those regulations. The Contractor will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 CFR part 2. "Qualified Service Organization" as used in this Contract has the same meaning as the definition set forth in 42 CFR § 2.11.

STATE OF IOWA  
CONTRACT PROVISIONS  
SECTION 2: GENERAL TERMS FOR SERVICES CONTRACTS

**2.1 Definitions.** Definitions in this section correspond with capitalized terms in the Contract.

**“Acceptance”** means that the Agency has determined that one or more Deliverables satisfy the Agency’s Acceptance Tests. Final Acceptance means that the Agency has determined that all Deliverables satisfy the Agency’s Acceptance Tests. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency’s Acceptance Tests.

**“Acceptance Criteria”** means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Agency and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

**“Acceptance Tests” or “Acceptance Testing”** mean the tests, reviews, and other activities that are performed by or on behalf of the Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

**“Bid Proposal” or “Proposal”** means the Contractor’s proposal submitted in response to the Solicitation, if this Contract arises out of a competitive process.

**“Business Days”** means any day other than a Saturday, Sunday, or State holiday as specified by Iowa Code §1C.2.

**“Confidential Information”** means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “Disclosing Party”) to the other party (a

“Receiving Party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Regardless of whether or not the following information is designated as confidential, the term Confidential Information includes information that could be used to identify recipients or applicants of Agency services and recipients of Contract services including Protected Health Information (45 C.F.R. § 160.103) and Personal Information (Iowa Code § 715C.1(11)), Agency security protocols and procedures, Agency system architecture, information that could compromise the security of the Agency network or systems, and information about the Agency’s current or future competitive procurements, including the evaluation process prior to the formal announcement of results.

Confidential Information does not include any information that: (1) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (2) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (3) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (4) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (5) is independently developed by the Receiving Party without any reliance on Confidential Information

disclosed by the Disclosing Party; (6) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (7) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

**“Contract”** means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor and includes the signed Contract, the General Terms for Services Contracts, the Special Terms, and any Special Contract Attachments, as these documents may be amended from time to time.

**“Deficiency”** means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

**“Deliverables”** means all of the services, goods, products, work, work product, data, items, materials and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or made available through, the Contractor (or any agent, contractor or subcontractor of the Contractor) in connection with this Contract. This includes data that is collected on behalf of the Agency.

**“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

**“Force Majeure”** means an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. Force Majeure does not include: financial difficulties, strikes, labor unrest, or supply chain disruptions.

**“Invoice”** means a Contractor’s claim for payment. At the Agency’s discretion, claims may be submitted on an original invoice from the Contractor or may be submitted on a claim form acceptable to the Agency, such as a General Accounting Expenditure (GAX) form.

**“Solicitation”** means the formal or informal procurement (and any Addenda thereto) identified in the Contracts that was issued to solicit the Bid Proposal leading to this Contract.

**“Special Contract Attachments”** means any attachment to this Contract.

**“Special Terms”** means the Section of the Contract entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work and contract payment terms. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail.

**“Specifications”** means all specifications, requirements, technical standards, performance standards, representations, and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the Solicitation, and the Bid Proposal.

Specifications shall include the Acceptance Criteria and any specifications, standards, or criteria stated or set forth in any applicable state, federal, foreign, and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

**“State”** means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and



commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

**2.2 Duration of Contract.** The term of the Contract shall begin and end on the dates specified in the Contract, unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, amend the end date of this Contract by exercising any applicable extension by giving the Contractor a written extension at least sixty (60) days prior to the expiration of the initial term or renewal term.

**2.3 Scope of Work.** The Contractor shall provide Deliverables that comply with and conform to the Specifications. Deliverables shall be performed within the boundaries of the United States.

**2.4 Compensation.**

**2.4.1 Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to the Contractor, in whole or in part, without penalty to the Agency or work stoppage by the Contractor, in the event the Agency determines that: (1) the Contractor has failed to perform any of its duties or obligations as set forth in this Contract; (2) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency; or (3) the Contractor has failed to perform Close-Out Event(s). No interest shall accrue or be paid to the Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

**2.4.2 Erroneous Payments and Credits.** The Contractor shall promptly repay or refund the full amount of any overpayment or erroneous payment within thirty (30) Business Days after either discovery by the Contractor or notification by the Agency of the overpayment or erroneous payment.

**2.4.3 Offset Against Sums Owed by the Contractor.** In the event that the Contractor owes the State any sum under the terms of this Contract, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, offset any such sum against: (1) any sum Invoiced by, or owed to, the Contractor under this Contract, or (2) any sum or amount owed by the State to the Contractor, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing offset.

**2.5 Termination.**

**2.5.1 Termination for Cause by the Agency.**

The Agency may terminate this Contract upon written notice for the breach by the Contractor or any subcontractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to the Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

**2.5.1.1** The Contractor furnished any statement, representation, warranty, or certification in connection with this Contract, the Solicitation, or the Bid Proposal that is false, deceptive, or materially incorrect or incomplete;

**2.5.1.2** The Contractor or any of the Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

**2.5.1.3** The Contractor or any parent or affiliate of the Contractor owning a controlling interest in the Contractor dissolves;

**2.5.1.4** The Contractor terminates or suspends its business;

**2.5.1.5** The Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by the Contractor related to the Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;

**2.5.1.6** The Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code Chapter 8F), or local laws, rules, ordinances, regulations, or orders when performing within the scope of this Contract;

**2.5.1.7** The Agency determines or believes the Contractor has engaged in conduct that: (1) has or may expose the Agency or the State to material liability; or (2) has caused or may cause a person's life, health, or safety to be jeopardized;

**2.5.1.8** The Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress, or any other intellectual property right or proprietary right, or the Contractor misappropriates or allegedly misappropriates a trade secret;

**2.5.1.9** The Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

**2.5.1.10** Any of the following has been engaged in by or occurred with respect to the Contractor or any corporation, shareholder or entity having or owning a controlling interest in the Contractor:

- Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now

or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

- Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- Making an assignment for the benefit of creditors;
- Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with the Contractor's performance of its obligations under this Contract; or
- Taking any action to authorize any of the foregoing.

**2.5.2 Termination Upon Notice.** Following a thirty (30) day written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to the Contractor. Termination can be for any reason or no reason at all.

**2.5.3 Termination Due to Lack of Funds or Change in Law.** Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

**2.5.3.1** The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or

**2.5.3.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

**2.5.3.3** If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

**2.5.3.4** If the Agency's duties, programs or responsibilities are modified or materially altered; or

**2.5.3.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide the Contractor with written notice of termination pursuant to this section.

**2.5.4 Other remedies.** The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

**2.5.5 Limitation of the State's Payment Obligations.** In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section 2.5.1, *Termination for Cause by the Agency*) the Agency shall pay only those amounts, if any, due and owing to the Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 2.5.3, *Termination Due to Lack of Funds or Change in Law*, the Agency's obligation to pay the Contractor such amounts

and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of Invoices and proper proof of the Contractor's claim.

Notwithstanding the foregoing, this section in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of the Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

**2.5.5.1** The payment of unemployment compensation to the Contractor's employees;

**2.5.5.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

**2.5.5.3** Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead, or other costs associated with the performance of the Contract;

**2.5.5.4** Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments, or commitments made in connection with this Contract; or

**2.5.5.5** Any taxes the Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes, or property taxes.

**2.5.6 Contractor's Contract Close-Out Duties.** Upon receipt of notice of termination, at expiration of the Contract, or upon request of the Agency (hereafter, "Close-Out Event"), the Contractor shall:

**2.5.6.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the Close-Out Event, describing the status of all work

performed under the Contract and such other matters as the Agency may require.

**2.5.6.2** Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to the Contractor.

**2.5.6.3** Cooperate in good faith with the Agency and its employees, agents, and independent contractors during the transition period between the Close-Out Event and the substitution of any replacement service provider.

**2.5.6.4** Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by the Contractor.

**2.5.6.5** Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied at that time.

**2.5.7 Termination for Cause by the Contractor.** The Contractor may only terminate this Contract for the breach by the Agency of any material term of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of the Contractor's written notice of breach.

## ***2.6 Reserved.***

## ***2.7 Indemnification.***

**2.7.1 By the Contractor.** The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers, and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements, and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office,) and the costs, expenses, and attorneys' fees of other counsel

retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

**2.7.1.1** Any breach of this Contract;

**2.7.1.2** Any negligent, intentional, or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

**2.7.1.3** The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

**2.7.1.4** Any failure by the Contractor to make all reports, payments, and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees, or costs required by the Contractor to conduct business in the State of Iowa;

**2.7.1.5** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates, or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

## ***2.8 Insurance.***

**2.8.1 Insurance Requirements.** The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract, which includes any extensions or renewals thereof. The Contractor's insurance shall, among other things:

**2.8.1.1** Be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this

Contract regardless of the date the claim is filed or expiration of the policy.

**2.8.1.2.** Name the State of Iowa and the Agency as additional insureds or loss payees on the policies for all coverages required by this Contract, with the exception of Workers' Compensation, or the Contractor shall obtain an endorsement to the same effect; and

**2.8.1.3** Provide a waiver of any subrogation rights that any of its insurance carriers might have against the State on the policies for all coverages required by this Contract, with the exception of Workers' Compensation.

The requirements set forth in this section shall be indicated on the certificates of insurance coverage supplied to the Agency.

**2.8.2 Types and Amounts of Insurance Required.** Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified in the Special Terms for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

**2.8.3 Certificates of Coverage.** The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract, which includes any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least a thirty (30) day prior written notice to the Agency. The certificates shall be subject to approval by the Agency. Approval of the insurance certificates by the

Agency shall not relieve the Contractor of any obligation under this Contract.

## ***2.9 Ownership and Security of Agency Information.***

**2.9.1 Ownership and Disposition of Agency Information.** Any information either supplied by the Agency to the Contractor, or collected by the Contractor on the Agency's behalf in the course of the performance of this Contract, shall be considered the property of the Agency ("Agency Information"). The Contractor will not use the Agency Information for any purpose other than providing services under the Contract, nor will any part of the information and records be disclosed, sold, assigned, leased, or otherwise provided to third parties or commercially exploited by or on behalf of the Contractor. The Agency shall own all Agency Information that may reside within the Contractor's hosting environment and/or equipment/media.

**2.9.2 Foreign Hosting and Storage Prohibited.** Agency Information shall be hosted and/or stored within the continental United States only.

**2.9.3 Access to Agency Information that is Confidential Information.** The Contractor's employees, agents, and subcontractors may have access to Agency Information that is Confidential Information to the extent necessary to carry out responsibilities under the Contract. Access to such Confidential Information shall comply with both the State's and the Agency's policies and procedures.

**2.9.4 No Use or Disclosure of Confidential Information.** Confidential Information collected, maintained, or used in the course of performance of the Contract shall only be used or disclosed by the Contractor as expressly authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. The Contractor shall immediately report to the Agency any unauthorized use or disclosure of Confidential Information. The Contractor may be held civilly or criminally liable for improper use or

disclosure of Confidential Information.

**2.9.5 Contractor Breach Notification**

**Obligations.** The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized use or disclosure of Confidential Information or other event(s) requiring notification in accordance with applicable law. In the event of a breach of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to follow Agency directives, which may include assuming responsibility for informing all such individuals in accordance with applicable laws, and to indemnify, hold harmless, and defend the State of Iowa against any claims, damages, or other harm related to such breach.

**2.9.6 Compliance of Contractor Personnel.**

The Contractor and the Contractor's personnel shall comply with the Agency's and the State's security and personnel policies, procedures, and rules, including any procedure which the Agency's personnel, contractors, and consultants are normally asked to follow. The Contractor agrees to cooperate fully and to provide any assistance necessary to the Agency in the investigation of any security breaches that may involve the Contractor or the Contractor's personnel. All services shall be performed in accordance with State Information Technology security standards and policies as well as Agency security protocols and procedures. By way of example only, see Iowa Code 8A.206,

<http://secureonline.iowa.gov/links/index.html>, and <http://das.ite.iowa.gov/standards/index.html>.

**2.9.7 Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing Confidential Information, the Contractor shall promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the Confidential Information.

**2.9.8 Return and/or Destruction of**

**Information.** Upon expiration or termination of the Contract for any reason, the Contractor agrees to comply with all Agency directives

regarding the return or destruction of all Agency Information and any derivative work. Delivery of returned Agency Information must be through a secured electronic transmission or by parcel service that utilizes tracking numbers. Such information must be provided in a format useable by the Agency. Following the Agency's verified receipt of the Agency Information and any derivative work, the Contractor agrees to physically and/or electronically destroy or erase all residual Agency Information regardless of format from the entire Contractor's technology resources and any other storage media. This includes, but is not limited to, all production copies, test copies, backup copies and /or printed copies of information created on any other servers or media and at all other Contractor sites. Any permitted destruction of Agency Information must occur in such a manner as to render the information incapable of being reconstructed or recovered. The Contractor will provide a record of information destruction to the Agency for inspection and records retention no later than thirty (30) days after destruction.

**2.9.9 Contractor's Inability to Return and/or Destroy Information.**

If for any reason the Agency Information cannot be returned and/or destroyed upon expiration or termination of the Contract, the Contractor agrees to notify the Agency with an explanation as to the conditions which make return and/or destruction not possible or feasible. Upon mutual agreement by both parties that the return and/or destruction of the information is not possible or feasible, the Contractor shall make the Agency Information inaccessible. The Contractor shall not use or disclose such retained Agency Information for any purposes other than those expressly permitted by the Agency. The Contractor shall provide to the Agency a detailed description as to the procedures and methods used to make the Agency Information inaccessible no later than thirty (30) days after making the information inaccessible. If the Agency provides written permission for the Contractor to retain the

Agency Information in the Contractor's information systems, the Contractor will extend the protections of this Contract to such information and limit any further uses or disclosures of such information.

**2.9.10 Contractors that are Business Associates.** If the Contractor is the Agency's Business Associate, and there is a conflict between the Business Associate Agreement and this Section 2.9, the provisions in the Business Associate Agreement shall control.

## **2.10 Intellectual Property.**

**2.10.1 Ownership and Assignment of Other Deliverables.** The Contractor agrees that the State and the Agency shall become the sole and exclusive owners of all Deliverables. The Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. The Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of the Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary, or affiliate of the Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by the Agency, upon completion or termination

of this Contract, the Contractor will immediately turn over to the Agency all Deliverables not previously delivered to the Agency, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors, or affiliates, without the prior written consent of the Agency.

**2.10.2 Waiver.** To the extent any of the Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, the Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

**2.10.3 Further Assurances.** At the Agency's request, the Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect, or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 2.10, *Intellectual Property*.

**2.10.4 Publications.** Prior to completion of all services required by this Contract, the Contractor shall not publish in any format any final or interim report, document, form, or other material developed as a result of this Contract without the express written consent of the Agency. Upon completion of all services required by this Contract, the Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Agency has had an opportunity to review and comment upon the publication. Any such publication shall contain a statement that the work was done pursuant to a contract with the Agency and that it does not necessarily reflect the opinions, findings, and conclusions of the Agency.

## **2.11 Warranties.**

**2.11.1 Construction of Warranties Expressed in this Contract with Warranties Implied by**

**Law.** Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through the course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. With the exception of Subsection 2.11.3, the provisions of this section apply during the Warranty Period as defined in the Contract.

**2.11.2 Contractor represents and warrants that:**

**2.11.2.1** All Deliverables shall be wholly original with and prepared solely by the Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses, and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses, and other rights assigned, granted, or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party;

**2.11.2.2** The Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and

**2.11.2.3** The Agency shall peacefully and quietly have, hold, possess, use, and enjoy the Deliverables without suit, disruption, or interruption.

**2.11.3 The Contractor represents and warrants that:**

**2.11.3.1** The Deliverables (and all intellectual property rights and proprietary rights arising out

of, embodied in, or related to such Deliverables); and

**2.11.3.2** The Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. The Contractor further represents and warrants there is no pending or threatened claim, litigation, or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. The Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential, or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then the Contractor shall, at the Agency's request and at the Contractor's sole expense:

- Procure for the Agency the right or license to continue to use the Deliverable at issue;
- Replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation, or misappropriation;
- Modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation, or misappropriation; or
- Accept the return of the Deliverable at issue and refund to the Agency all fees, charges, and any other amounts paid by the Agency with respect to such Deliverable. In addition, the Contractor agrees to indemnify, defend, protect, and hold harmless the State and its officers, directors, employees, officials, and agents as



provided in the Indemnification Section of this Contract, including for any breach of the representations and warranties made by the Contractor in this section.

The warranty provided in this Section 2.11.3 shall be perpetual, shall not be subject to the contractual Warranty Period, and shall survive termination of this Contract. The foregoing remedies provided in this subsection shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

**2.11.4 The Contractor represents and warrants that the Deliverables shall:**

**2.11.4.1** Be free from material Deficiencies; and

**2.11.4.2** Meet, conform to, and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Contract. During the Warranty Period the Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five (5) Business Days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event the Contractor is unable to repair, correct, or replace such Deliverable to the Agency's satisfaction, the Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal, or equitable remedies. The Contractor shall be available at all reasonable times to assist the Agency with questions, problems, and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverables may have been accepted by

the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

**2.11.5** The Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent, and workmanlike manner by knowledgeable, trained, and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable Specification shall be the generally accepted industry standard. So long as the Agency notifies the Contractor of any services performed in violation of this standard, the Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, the Contractor shall reimburse the Agency any fees or compensation paid to the Contractor for the unsatisfactory services.

**2.11.6** The Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the entire term of this Contract, which includes any extensions or renewals thereof, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

**2.11.7 Obligations Owed to Third Parties.**

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that

the Agency will not have any obligations with respect thereto.

**2.12 Acceptance of Deliverables.**

**2.12.1 Acceptance of Written Deliverables.**

For the purposes of this section, written Deliverables means documents including, but not limited to project plans, planning documents, reports, or instructional materials ("Written Deliverables"). Although the Agency determines what Written Deliverables are subject to formal Acceptance, this section generally does not apply to routine progress or financial reports. Absent more specific Acceptance Criteria in the Special Terms, following delivery of any Written Deliverable pursuant to the Contract, the Agency will notify the Contractor whether or not the Deliverable meets contractual specifications and requirements. Written Deliverables shall not be considered accepted by the Agency, nor does the Agency have an obligation to pay for such Deliverables, unless and until the Agency has notified the Contractor of the Agency's Final Acceptance of the Written Deliverables. In all cases, any statements included in such Written Deliverables that alter or conflict with any contractual requirements shall in no way be considered as changing the contractual requirements unless and until the parties formally amend the Contract.

**2.12.2. Reserved. (*Acceptance of Software Deliverables*)**

**2.12.3 Notice of Acceptance and Future Deficiencies.** The Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Contract or require performance in the event the Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable.

**2.13 Contract Administration.**

**2.13.1 Independent Contractor.** The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents, and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division, or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

**2.13.2 Incorporation of Documents.** To the extent this Contract arises out of a Solicitation, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the Solicitation and the Bid Proposal. The Solicitation and the Bid Proposal are incorporated into the Contract by reference. If the Contractor proposed exceptions or modifications to the Sample Contract attached to the Solicitation or to the Solicitation itself, these proposed exceptions or modifications shall not be incorporated into this Contract unless expressly set forth herein. If there is a conflict between the Contract, the Solicitation, and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the Solicitation; (3) the Bid Proposal.

**2.13.3 Intent of References to Bid Documents.**

To the extent this Contract arises out of a Solicitation, the references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the Solicitation and the Bid Proposal. The failure of the parties to make reference to the terms of the Solicitation or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the

Solicitation and the Contractor's Bid Proposal. Terms offered in the Bid Proposal, which exceed the requirements of the Solicitation, shall not be construed as creating an inconsistency or conflict with the Solicitation or the Contract. The contractual obligations of the Agency are expressly stated in this document. The Bid Proposal does not create any express or implied obligations of the Agency.

**2.13.4 Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders in effect during the entire term of this Contract, which includes any extensions or renewals thereof, when providing Deliverables pursuant to this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents, and subcontractors shall also comply with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Administrative Code chapter 4. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant

from the Federal Government, the Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation, a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

**2.13.5 Procurement.** The Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

**2.13.6 Non-Exclusive Rights.** This Contract is not exclusive. The Agency reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the entire term of this Contract, which includes any extensions or renewals thereof.

**2.13.7 Amendments.** With the exception of the Contract end date, which may be extended in the Agency's sole discretion, this Contract may only be amended by mutual written consent of the parties. Amendments shall be executed on a form approved by the Agency that expressly states the intent of the parties to amend this Contract. This Contract shall not be amended in any way by use of terms and conditions in an Invoice or other ancillary transactional document. To the extent that language in a transactional document conflicts with the terms of this Contract, the terms of this Contract shall control.

**2.13.8 No Third Party Beneficiaries.** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.

**2.13.9 Use of Third Parties.** The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to

Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations, and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

**2.13.10 Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

**2.13.11 Assignment and Delegation.** The Contractor may not assign, transfer, or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

**2.13.12 Integration.** This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

**2.13.13 No Drafter.** No party to this Contract shall be considered the drafter of this Contract for the purpose of any statute, case law, or rule of construction that would or might cause any provision to be construed against the drafter.

**2.13.14 Headings or Captions.** The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

**2.13.15 Not a Joint Venture.** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

**2.13.16 Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation, or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, for any default of activities and obligations, and for any fiscal liabilities.

**2.13.17 Supersedes Former Contracts or Agreements.** This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Deliverables to be provided in connection with this Contract.

**2.13.18 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any

subsequent right to require performance or to claim a breach.

**2.13.19 Notice.** Any notices required by the Contract shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party's Contract Manager as set forth in the Contract. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party. Each such notice shall be deemed to have been provided:

- At the time it is actually received in the case of hand delivery;
- Within one (1) day in the case of overnight delivery, courier or services such as Federal Express with guaranteed next-day delivery; or
- Within five (5) days after it is deposited in the U.S. Mail.

**2.13.20 Cumulative Rights.** The various rights, powers, options, elections, and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled.

**2.13.21 Severability.** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

**2.13.22 Time is of the Essence.** Time is of the essence with respect to the Contractor's performance of the terms of this Contract. The Contractor shall ensure that all personnel providing Deliverables to the Agency are responsive to the Agency's requirements and requests in all respects.

**2.13.23 Authorization.** The Contractor represents and warrants that:

**2.13.23.1** It has the right, power, and authority to enter into and perform its obligations under this Contract.

**2.13.23.2** It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Contract and this Contract constitutes a legal, valid, and binding obligation upon itself in accordance with its terms.

**2.13.24 Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

**2.13.25 Records Retention and Access.**

**2.13.25.1 Financial Records.** The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency during the entire term of this Contract, which includes any extensions or renewals thereof, and for a period of at least seven (7) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven (7) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven (7) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State of Iowa or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the Contractor relating to orders, Invoices or payments, or any other Documentation or materials pertaining to this Contract, wherever

such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

**2.13.25.1.1** Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third-party in-kind (property or service) contributions, these funds must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.

**2.13.25.1.2** The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.

**2.13.25.1.3** The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.

**2.13.25.1.4** The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring, and evaluating its program.

**2.13.25.2** The Contractor shall retain all non-medical and medical client records for a period of seven (7) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code § 614.1(9).

**2.13.26 Audits.** Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Agency if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Agency that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. The Contractor shall provide the Agency with a copy of any written audit findings or reports, whether in draft or final form, within two (2) Business Days following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

**2.13.27 Reimbursement of Audit Costs.** If the Auditor of the State of Iowa notifies the Agency of an issue or finding involving the Contractor's noncompliance with laws, rules, regulations, and/or contractual agreements governing the funds distributed under this Contract, the Contractor shall bear the cost of the Auditor's review and any subsequent assistance provided by the Auditor to determine compliance. The Contractor shall reimburse the Agency for any

costs the Agency pays to the Auditor for such review or audit.

**2.13.28 Staff Qualifications and Background Checks.** The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors, or anyone acting for or on behalf of the Contractor, are properly licensed, certified, or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified, or accredited under state law or the Iowa Administrative Code. The Agency reserves the right to conduct and/or request the disclosure of criminal history and other background investigation of the Contractor, its officers, directors, shareholders, and the Contractor's staff, agents, or subcontractors retained by the Contractor for the performance of Contract services.

**2.13.29 Solicitation.** The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage, or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

**2.13.30 Obligations Beyond Contract Term.** All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the expiration or termination of this Contract. Contract sections that survive include, but are not necessarily limited to, the following: (1) Section 2.4.2, *Erroneous Payments and Credits*; (2) Section 2.5.5, *Limitation of the State's Payment Obligations*; (3) Section 2.5.6, *Contractor's Contract Close-Out Duties*; (4) Section 2.7, *Indemnification*, and all subparts thereof; (5) Section 2.9, *Ownership and Security of Agency Information*, and all subparts thereof; (6) Section 2.10, *Intellectual Property*, and all subparts thereof; (7) Section 2.13.10, *Choice of Law and Forum*; (8) Section 2.13.16, *Joint and*

*Several Liability*; (9) Section 2.13.20, *Cumulative Rights*; (10) Section 2.13.24 *Successors In Interest*; (11) Section 2.13.25, *Records Retention and Access*, and all subparts thereof; (12) Section 2.13.26, *Audits*; (13) Section 2.13.27, *Reimbursement of Audit Costs*; (14) Section 2.13.35, *Repayment Obligation*; and (15) Section 2.13.39, *Use of Name or Intellectual Property*.

**2.13.31 Counterparts.** The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

**2.13.32 Delays or Potential Delays of Performance.** Whenever the Contractor encounters any difficulty which is delaying or threatens to delay the timely performance of this Contract, including but not limited to potential labor disputes, the Contractor shall immediately give notice thereof in writing to the Agency with all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Agency or the State of any rights or remedies to which either is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. Furthermore, the Contractor will not be excused from failure to perform that is due to a Force Majeure unless and until the Contractor provides notice pursuant to this provision.

**2.13.33 Delays or Impossibility of Performance Based on a Force Majeure.**

Neither party shall be in default under the Contract if performance is prevented, delayed, or made impossible to the extent that such prevention, delay, or impossibility is caused by a Force Majeure. If a Force Majeure delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent

possible, comparable performance. The party seeking to exercise this provision shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

**2.13.34 Right to Address the Board of Directors or Other Managing Entity.** The Agency reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding performance, expenditures, and any other issue the Agency deems appropriate.

**2.13.35 Repayment Obligation.** In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

**2.13.36 Reporting Requirements.** If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to the Agency on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

**2.13.37 Immunity from Liability.** Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from the Contractor's and/or

subcontractors' activities involving third parties and arising from the Contract.

**2.13.38 Public Records.** The laws of the State require procurement and contract records to be made public unless otherwise provided by law.

**2.13.39 Use of Name or Intellectual Property.** The Contractor agrees it will not use the Agency and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Agency and/or the State.

**2.13.40 Taxes.** The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on the Contractor's employees' wages. The State is exempt from State and local sales and use taxes on the Deliverables.

**2.13.41 No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

**2.14 Contract Certifications.** The Contractor will fully comply with obligations herein. If any conditions within these certifications change, the Contractor will provide written notice to the Agency within twenty-four (24) hours from the date of discovery.

**2.14.1 Certification of Compliance with Pro-Children Act of 1994.** The Contractor must comply with Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the Deliverables are funded by federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans or loan



guarantees, and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where Women, Infants, and Children (WIC) coupons are redeemed.

The Contractor further agrees that the above language will be included in any subawards that contain provisions for children's services and that all subgrantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000.00 per day.

**2.14.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions**

By signing this Contract, the Contractor is providing the certification set out below:

**2.14.2.1** The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**2.14.2.2** The Contractor shall provide immediate written notice to the Agency if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

**2.14.2.3** The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and

Coverage sections of rules implementing Executive Order 12549. Contact the Agency for assistance in obtaining a copy of those regulations.

**2.14.2.4** The Contractor agrees by signing this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Agency or agency with which this transaction originated.

**2.14.2.5** The Contractor further agrees by signing this Contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**2.14.2.6** A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

**2.14.2.7** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**2.14.2.8** Except for transactions authorized under Section 2.14.2.4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**2.14.2.9** The Contractor certifies, by signing this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Contract.

**2.14.3 Certification Regarding Lobbying.** The Contractor certifies, to the best of his or her knowledge and belief, that:

**2.14.3.1** No federal appropriated funds have been paid or will be paid on behalf of the sub-grantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan, or cooperative agreement.

**2.14.3.2** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, or an employee of a Member of Congress in

connection with this Contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**2.14.3.3** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

**2.14.4 Certification Regarding Drug Free Workplace**

**2.14.4.1 Requirements for Contractors Who are Not Individuals.** If the Contractor is not an individual, the Contractor agrees to provide a drug-free workplace by:

**2.14.4.1.1** Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

**2.14.4.1.2** Establishing a drug-free awareness program to inform employees about:

- The dangers of drug abuse in the workplace;
- The Contractor's policy of maintaining a drug-free workplace;
- Any available drug counseling, rehabilitation, and employee assistance programs; and
- The penalties that may be imposed upon employees for drug abuse violations;

**2.14.4.1.3** Making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by Subsection 2.14.4.1.1;

**2.14.4.1.4** Notifying the employee in the statement required by Subsection 2.14.4.1.1 that as a condition of employment on such contract, the employee will:

- Abide by the terms of the statement; and
- Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

**2.14.4.1.5** Notifying the contracting agency within ten (10) days after receiving notice under the second unnumbered bullet of Subsection 2.14.4.1.4 from an employee or otherwise receiving actual notice of such conviction;

**2.14.4.1.6** Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by 41 U.S.C. § 703; and

**2.14.4.1.7** Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

**2.14.4.2 Requirement for Individuals.** If the Contractor is an individual, by signing the Contract, the Contractor agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the Contract.

**2.14.4.3 Notification Requirement.** The Contractor shall, within thirty (30) days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. § 701(a)(1)(D)(ii) or 41 U.S.C. § 702(a)(1)(D)(ii):

**2.14.4.3.1** Take appropriate personnel action against such employee up to and including termination; or

**2.14.4.3.2** Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

**2.14.5 Conflict of Interest.** The Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer, or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code chapter 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Agency.

**2.14.6 Certification Regarding Sales and Use Tax.** By executing this Contract, the Contractor certifies it is either (1) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (2) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code § 423.1(42) and (43). The Contractor also acknowledges that the Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

**2.14.7 Certification Regarding Iowa Code Chapter 8F.** If the Contractor is or becomes subject to Iowa Code chapter 8F during the entire term of this Contract, which includes any extensions or renewals thereof, the Contractor shall comply with the following:

**2.14.7.1** As a condition of entering into this Contract, the Contractor shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.

**2.14.7.2** The Contractor agrees that it will provide the information described in this section to the Agency or the Legislative Services Agency upon request. The Contractor shall not impose a charge for making information available for inspection or providing information to the Agency or the Legislative Services Agency.

**2.14.7.3** Pursuant to Iowa Code § 8F.4, the Contractor shall file an annual report with the Agency and the Legislative Services Agency within ten (10) months following the end of the Contractor's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:

**2.14.7.3.1** Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

**2.14.7.3.2** Financial information relating to all service contracts with the Agency during the preceding year, including the costs by category to provide the contracted services.

**2.14.7.3.3** Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the Contractor covering the preceding year.

**2.14.7.3.4** Corrective action taken or planned by the Contractor in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.

**2.14.7.3.5** Any changes in the information submitted in accordance with Iowa Code §8F.3

**2.14.7.3.6** A certification signed by an officer and director, two directors, or the sole proprietor of the Contractor, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.

**2.14.7.3.7** In addition, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.

**ATTACHMENT H**  
**STATE OF MAINE SPECIFIC CONTRACT PROVISIONS**

Terms found in the following State of Maine, Rider B-IT Contract Terms and the State of Maine, Business Associate Agreement are standard State of Maine contract requirements. They are agreed to by Goold Health Systems Inc., an Emdeon Company as of April 1, 2015 as a condition this Contract. The State of Maine, Rider B-IT Contract Terms and the State of Maine, Business Associate Agreement do not need to be executed as part of this Contract. The terms supplement and are made a part of this Contract to which they are an attachment.

Contractor Initials: \_\_\_\_\_ Vermont State Initials: \_\_\_\_\_

**STATE OF MAINE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**CONTRACT TERMS**  
**RIDER B-IT**

**METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT** \$347,115.60
2. **INVOICES AND PAYMENTS** The Payment Provisions of this Contract are contained in their entirety in Attachment B.
3. **INDEPENDENT CAPACITY** In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.
4. **AGREEMENT ADMINISTRATOR** The Agreement Administrator is the Department's representative for this Agreement. S/he is the single authority to act on behalf of the Department for this Agreement. S/he shall approve all invoices for payment. S/he shall make decisions on all claims of the Provider. The Provider shall address all Agreement correspondence and invoices to the Agreement Administrator. The following person is the Agreement Administrator for this Agreement:

Name:	Jan Yorks-Wright
Title:	Pharmacy Manager
Address:	MaineCare Services Department of Health and Human Services 242 State Street State House Station 11 Augusta, ME 04333
Telephone:	207-287-1999

E-mail address: [jan.yorks-wright@maine.gov](mailto:jan.yorks-wright@maine.gov)

The following individual is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement. All project status reports, day to day operational issues and project program material and issues shall be directed to this individual.

Name: Jan Yorks-Wright  
Title: Pharmacy Manager  
Address: MaineCare Services  
Department of Health and Human Services  
242 State Street  
State House Station 11  
Augusta, ME 04333  
Telephone: 207-287-1999  
E-mail address: [jan.yorks-wright@maine.gov](mailto:jan.yorks-wright@maine.gov)

**5. CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.

**6. SUBCONTRACTORS** The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

The Provider is solely responsible for the performance of work under this Agreement. The approval of the Department for the Provider to subcontract for work under this Agreement shall not relieve the Provider in any way of its responsibility for performance of the work.

All Subcontractors shall be bound by the terms and conditions set forth in this Agreement. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement. The Provider shall indemnify and hold harmless the Department from and against any such claim, loss, damage, or liability as set forth in Section 16, State held Harmless.

**7. SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Agreement, or any portion thereof, or of its right, title, or interest therein, without the written approval of the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.

**8. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, the Provider certifies as follows:

1. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a *bona fide* occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

3. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

4. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged discriminatory practice.

5. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.

6. Providers and Subcontractors with Agreements in excess of \$50,000 shall also pursue in good faith affirmative action programs.

7. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be

binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**9. EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time, or any other basis, during the period of this Agreement, any personnel who are, or have been, at any time during the period of this Agreement, in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time, or any other basis, during the period of this Agreement, any retired employee of the Department, who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement, so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**10. STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, due to his employment by, or financial interest in, the Provider, or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**11. NO SOLICITATION** The Provider certifies that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, any company or person, other than a *bona fide* employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from, the award of this Agreement. For breach or violation of this provision, the Department shall have the right to terminate this Agreement without liability or, at its discretion, to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**12. ACCOUNTING, RECORDS, AND AUDIT**

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times



during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.

2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.

3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.

4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.

5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.

6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

7. **ACCESS TO PUBLIC RECORDS** As a condition of accepting a Agreement for services under this section, a Provider must agree to treat all records, other than proprietary information, relating to personal services work performed under the Agreement as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the Provider and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the Agreement and information concerning employee and Agreement oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The

Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to Agreements, Agreement extensions and Agreement amendments executed on or after October 1, 2009.

**13. TERMINATION** The performance of work under this Agreement may be terminated by the Department in whole or in part, whenever, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

Upon receipt of the Notice of Termination, the Provider shall:

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and

8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

**14. GOVERNMENTAL REQUIREMENTS** The Provider shall comply with all applicable governmental ordinances, laws, and regulations.

**15. GOVERNING LAW** This Agreement shall be governed by, interpreted, and enforced in accordance with the laws, statutes, and regulations of the State of Maine, without regard to conflicts of law provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and of the Uniform Computer Information Transactions Act shall not apply to this Agreement. Any legal proceeding against the Department regarding this Agreement shall be brought in the State of Maine in a court of competent jurisdiction.

**16. STATE HELD HARMLESS** The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

**17. LIMITATION OF LIABILITY** The Provider's liability for damages sustained by the Department as the result of Provider's default or acts or omissions in the performance of work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be no greater than:

1. Damages for violation or infringement of any copyright or trademark;
2. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and
3. The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

Notwithstanding the above, Provider shall not be liable for any indirect or consequential damages.

**18. NOTICE OF CLAIMS** The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to this Agreement, or which may affect the performance of duties under this Agreement, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement.

**19. APPROVAL** This Agreement must be approved by the State Controller and the State Purchases Review Committee before it can be considered a valid enforceable document.

**20. INSURANCE REQUIREMENTS** The Provider shall procure and maintain, for the duration of the Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the fulfillment of this Agreement by the Provider, its agents, representatives, employees, or Subcontractors.

**1. Minimum Coverage**

1. Commercial general liability (including products, completed operations, and broad-form contractual): \$1,000,000 per occurrence;
2. Workers' Compensation and employer's liability: as required by law;
3. Professional liability: \$1,000,000; and
4. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence.

**2. Other Provisions** Unless explicitly waived by the Department, the insurance policies should contain, or be endorsed to contain, the following provisions:

1. The Provider's insurance coverage shall be the primary insurance. Any insurance or self- insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
2. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. The Provider shall furnish the Department with certificates of insurance and with those endorsements, if any, effecting coverage required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the

right to require complete, certified copies of all required insurance policies at any time.

4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason including nonpayment.

**21. NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the Department does not receive sufficient funds to pay for the work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

**22. SEVERABILITY** The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision, or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

**23. INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B-IT (except for expressed exceptions to Rider B-IT included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

**24. FORCE MAJEURE** Either party may be excused from the performance of an obligation under this Agreement in the event that performance of that obligation by a party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

**25. SET-OFF RIGHTS** The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

**26. INTERPRETATION OF THE AGREEMENT**

1. **Reliance on Policy Determinations** The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon, and act in accordance with, such written policy determinations and operating guidelines, unless subsequently amended, modified, or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Agreement, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and Federal laws, regulations, policies, procedure, and guidelines, to be in complete compliance and conformity therewith.

2. **Titles Not Controlling** Titles of sections and paragraphs used in this Agreement are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.

3. **No Rule of Construction** This is a negotiated Agreement and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

27. **PERIOD OF WORK** Work under this Agreement shall begin no sooner than the date on which this Agreement has been fully executed by the parties and approved by the Controller and the State Purchases Review Committee. Unless terminated earlier, this Agreement shall expire on the date set out on the first page of this Agreement, or at the completion and acceptance of all specified tasks, and delivery of all contracted products and services as defined in this Agreement, including performance of any warranty and/or maintenance agreements, whichever is the later date.

28. **NOTICES** All notices under this Agreement shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, or 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested. Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

29. **ADVERTISING AND PUBLICATIONS** The Provider shall not publish any statement, news release, or advertisement pertaining to this Agreement without the prior written approval of the Agreement Administrator. Should this Agreement be funded, in whole or in part, by Federal funds, then in compliance with the Steven's Amendment, it will be clearly stated when issuing statements, press releases, requests for proposals, bid solicitations, and other documents: (1) the percentage of the total cost that was financed with Federal moneys; and (2) the dollar amount of Federal funds.

**30. CONFLICT OF INTEREST** The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its services hereunder. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

**31. LOBBYING**

1. **Public Funds** No Federal or State-appropriated funds shall be expended by the Provider for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature, or an employee of a member of Congress or State Legislature, in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over \$100,000 in Federal or State funds file with the Department on this provision.

2. **Federal Certification** Section 1352 of Title 31 of the US Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or Provider (such as the Department) certifies that no Federal funds will be used to lobby or influence a Federal officer or member of Congress.

The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and Agreements under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

3. **Other Funds** If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this section, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form to the Department.

**32. PROVIDER PERSONNEL**

1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement

Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.

2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.

3. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.

4. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.

5. During the course of this Agreement, the Department reserves the right to require a background check on any of the Provider's personnel (employees and Subcontractors) that are in any way involved in the performance of this Agreement.

**33. STATE PROPERTY** The Provider shall be responsible for the proper custody and care of any Department or State owned property furnished for the Provider's use in connection with the performance of this Agreement, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

**34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS**

1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

2. The Provider may not publish or copyright any data without the prior approval of the Department. The State and the Federal Government, if applicable, shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.



**35. PRODUCT WARRANTY** The Provider expressly warrants its products and services for one full year from their final written acceptance by the Department. The responsibility of the Provider with respect to this warranty is limited to correcting deficiencies in any deliverable using all the diligence and dispatch at its command, at no additional cost to the Department. The Provider is also responsible for correcting and/or updating any documentation affected by any operational support performed under this warranty provision.

**36. OPPORTUNITY TO CURE** The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision is not and shall be not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

**37. COVER** If, in the reasonable judgment of the Agreement Administrator, a breach or default by the Provider is not so substantial as to require termination, and reasonable efforts to induce the Provider to cure the breach or default are unavailing, and the breach or default is capable of being cured by the Department or by another Provider without unduly interfering with the continued performance by the Provider, then the Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

**38. ACCESSIBILITY** All IT products must be accessible to persons with disabilities, and must comply with the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply with the Computer Application Program Accessibility Standard (Maine.gov/oit/accessiblesoftware). All IT applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

**39. STATE IT POLICIES** All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (Maine.Gov/oit/oitpolicies) effective at the time this Agreement is executed

**40. CONFIDENTIALITY**

1. All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.
2. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of records, papers, files, communications, and

any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Agreement.

3. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.
4. The Provider shall comply with Maine Public Law 10 MRSA §1347 (Notice of Risk to Personal Data Act).

#### **41. OWNERSHIP**

1. All data (including Geographical Information Systems data), notebooks, plans, working papers and other works produced, and equipment and products purchased in the performance of this Agreement are the property of the Department, or the joint property of the Department and the Federal Government, if Federal funds are involved. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, or equipment and products purchased pursuant to this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.
2. Upon termination of this Agreement for any reason, or upon request of the Department, the Provider agrees to convey to the Department good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

#### **42. CUSTOM SOFTWARE** For all custom software furnished by the Provider as part of this agreement, the following terms and conditions shall apply:

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.
2. A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the complete system, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that this system shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This

obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.

**43. OFF-THE-SHELF (OTS) SOFTWARE** For all OTS software purchased by the Provider as part of this Agreement, the following terms and conditions shall apply.

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

2. This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not decompile or disassemble any OTS software provided under this Agreement, or modify any OTS software that bears the copyright notice of a third party. The Department will make and maintain no more than one archival copy (for back-up purpose) of each OTS software, and each copy will contain all legends and notices, and will be subject to the same conditions and restrictions as the original.

3. If the CPU on which any OTS software is licensed becomes temporarily unavailable, use of such OTS software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

**44. SOFTWARE AS SERVICE** When the software is fully owned, hosted, and operated by the Provider, and the Department uses said software remotely over the Internet, the following terms and conditions shall apply:

1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.

2. The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:

a. The Provider has failed to carry out its obligations set forth in the this Agreement; or

- b. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
  - c. The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or
  - d. The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or
  - e. A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.
- 3. The Provider is responsible for all fees to be paid to the Escrow Agent.
  - 4. The Escrow Agent may resign by providing advance written notice to both the Department and the Provider at least thirty (30) calendar days prior to the date of resignation. In such an event, it is the obligation of the Provider to establish a new escrow account with a new Escrow Agent.

**45. PRICE PROTECTION**

- 1. The Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to the Department.
- 2. If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

**OR**

**45. THIS ITEM IS INTENTIONALLY LEFT BLANK**

- 46. **IRREVOCABLE LETTER OF CREDIT** In order to assure the Provider's faithful adherence to the terms and conditions of this Agreement, the Provider shall submit an irrevocable letter of credit, acceptable to the Department, that is payable on demand. This letter

of credit will be procured at the expense of the Provider, naming the Department as the beneficiary, in the entire Agreement amount. In lieu of this requirement, the Department will accept a commitment letter from a recognized financial institution or investment fund stating that the Provider has sufficient capital to fund the obligations, and has legally committed such capital to fund the obligations, in accordance with this Agreement. The letter of credit, or the equivalent commitment letter, shall specifically refer to this Agreement, and shall bind the parties to all the terms and conditions of this Agreement. The Provider shall have fifteen (15) calendar days from the date of execution of this Agreement to furnish the letter of credit or the equivalent commitment letter. Should the Provider fail to comply with this section, then the Department shall have the right to terminate this Agreement without liability.

**OR**

**46. THIS ITEM IS INTENTIONALLY LEFT BLANK**

**47. ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

STATE OF MAINE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CONTRACT PROVISIONS  
BUSINESS ASSOCIATE AGREEMENT

A Business Associate Agreement (“Agreement”) is in place as of the effective date of this contract, April 1, 2015, between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the “Department”) and Goold Health Systems, Inc., an Emdeon Company (“Business Associate”), together (the “Parties”); and

WHEREAS, Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, “PHI”) on behalf of the Department in connection with Business Associate’s performance of its obligations.

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of Department’s PHI as required by law, including the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), and its implementing regulations at 45 CFR Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules or “HIPAA Rules”) as updated by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of the American Recovery and Reinvestment Act of 2009, and its implementing Regulations (together, the “HIPAA and HITECH Rules”); and

WHEREAS, the Parties agree that certain federal and state laws, rules, regulations and accreditation standards also impose confidentiality restrictions that apply to this business relationship, and may include, but are not limited to: 42 CFR 2 *et. seq.*; 5 M.R.S.A. §19203-D; 22 M.R.S.A. §§42, 261, 815, 824, 833, 1494, 1596, 1711-C, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 10 M.R.S.A 1346 *et. seq.*; 34-B M.R.S.A. §1207; 14-193 C.M.R, Ch. 1, Part A, § IX; and applicable accreditation standards of The Joint Commission or other appropriate accreditation body regarding confidentiality.

NOW THEREFORE, the parties agree as follows:

**Specific Definitions for the Purpose of this Agreement:**

***Breach*** means the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such PHI. A security or privacy incident that involves PHI is presumed to be a breach requiring notification unless the Department proves, through specific risk analysis steps, that there is a low probability that the PHI was compromised or a) the incident does not involved unsecured PHI, or b) the incident falls into another exception or safe harbor as set forth in the HIPAA and HITECH Rules.

***Business Associate*** is a person or entity that creates, receives, maintains or transmits PHI on behalf of, or provides services to, a covered entity, as set forth in the HIPAA Rules and other

than in the capacity of a workforce member.

**Covered Entity** is a 1) health plan, (2) health care clearinghouse, or 3) health care provider who electronically transmits any health information in connection with transactions for which HHS has adopted standards. Generally, these electronic transactions concern billing and payment for services or insurance coverage.

**Designated Record Set** means the billing and medical records about individuals maintained by or for a covered provider: the enrollment, claims adjudication, payment, case or medical management record systems maintained by or for a health plan; or that are used in whole, or in part, by the covered entity to make decisions about individuals.

**Individual** means the person who is the subject of the PHI.

**Protected Health Information** means information that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and is transmitted or maintained in electronic or any other form or medium.

**Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information [or PHI] or interference with system operation in an information system.

**Subcontractor means** a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private, to whom a business associate has delegated a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

**Unsecured Protected Health Information** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services ("HHS") in its guidance.

**General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA and HITECH Rules: Data Aggregation, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required by Law, and Use.

## 1. Permitted Uses and Disclosures

- a. Business Associate agrees to use or disclose the PHI authorized by this Agreement only to perform the services of the Underlying Agreement between the Parties, or as required by law.
- b. Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, only where a) the use or disclosure does not violate any law governing the protection of the PHI, including, but not limited to, prohibitions under 42 CFR Part 2 (Part 2 Regulations), and b) the disclosures are required by law or c) Business Associate agrees only to disclose the minimum necessary PHI to accomplish the intended purpose and i) obtains reasonable assurances from the person or entity to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity, and ii) the person or entity agree to immediately notify Business Associate of any instances of which it is aware that the confidentiality, privacy or security of the information has been actually or potentially breached.
- c. Business Associate may provide data aggregation services relating to the health care operations of the Department, or de-identify the Department's PHI, only when such specific services are permissible under the Underlying Agreement or as otherwise preapproved in writing by the Department.

## 2. Obligations and Activities of the Business Associate

- a. *Compliance.* Business Associate agrees to comply with the HIPAA and HITECH Rules, and other applicable state or federal law, to ensure the protection of the Department's PHI, and only use and disclose PHI consistent with the Department's minimum necessary policy and the legal requirements of this Agreement. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA or HITECH Rules or other state or federal law if performed by the Department.
- b. *Safeguards.* In complying with the HIPAA and HITECH Rules, Business Associate agrees to use appropriate administrative, technical and physical safeguards, and comply with any required security or privacy obligations, to protect the confidentiality, integrity and availability of the Department's PHI.
- c. *Reporting.* Business Associate agrees to report to the Department any inappropriate use or disclosure of the Department's PHI of which it becomes aware, i.e. any use or disclosure not permitted in this Agreement or in violation of any legal requirement, including actual and suspected breaches of unsecured PHI, and any actual or potential security incident of which it becomes aware. Such report will be made to the Department's Director of Healthcare Privacy or her designee within twenty-four (24) hours of when the Business Associate becomes aware of an actual or suspected incident



or breach. In the event that a breach is determined to have occurred under the authority of the Business Associate, Business Associate will cooperate promptly with the Department to provide all specific information required by the Department for mandatory notification purposes.

- d. *Subcontractors and Agents.* In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any third parties, agents or subcontractors (together, “Subcontractors”) that use, disclose, create, acquire, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. Business Associate shall obtain and maintain a written agreement with each Subcontractor that has or will have access, through Business Associate, to the Department’s PHI, ensuring that the Subcontractor agrees to be bound to the same restrictions, terms and conditions that apply to Business Associate under this Agreement.
- e. *Mitigation.* The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.
- f. *Accounting of Disclosures.* To the extent required by the terms of this Agreement, Business Associate will maintain and make available the information and/or documentation required to provide an accounting of disclosures as necessary to satisfy the Department’s obligations under 45 CFR 164.528.
- g. *Access.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate will use commercially reasonable efforts to make PHI available in the format requested, and as necessary to satisfy the Department’s obligation under 45 C.F.R. 164.524, within 30 days from the time of request. Business Associate will inform the Department of the individual’s request within 5 (five) business days of the request.
- h. *Amendment.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate agrees to make any amendment(s) to the PHI as directed or agreed to by the Department, or take other measures as necessary to satisfy the Department’s obligations under 45 CFR 164.526, in such time period and in such manner as the Department may direct.
- i. *Restrictions.* Upon notification from the Department, Business Associate shall adhere to any restrictions on the use or disclosure of PHI agreed to by or required of the Department pursuant to 45 CFR 164.522.
- j. *Audit by the Department or the HHS Secretary.* The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received

from the Department or used, acquired, maintained, created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate with the Medicaid Act, and the HIPAA and HITECH Rules, or any other federal, state or accreditation requirement. 45 C.F.R. 164.504.

- k. *Other Obligations:* To the extent that Business Associate is to carry out one or more of the Department's obligations under the HIPAA and HITECH Rules or other federal or state law, Business Associate agrees to comply with the legal requirements that apply to the Department in performing that obligation;

### **3. Obligations of the Department**

- a. The Department shall notify Business Associate of a) any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI to which the Department has agreed, to the extent such restrictions or limitations may affect the performance of Business Associate's services on behalf of the Department.
- b. The Department shall not request that Business Associate use or disclose PHI in any format, and in any manner, that would be prohibited if performed by the Department.

### **4. Hold Harmless**

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action that arise from any use or disclosure of PHI not specifically permitted by this Agreement, applicable state or federal laws, licensing, accreditation or other requirements.

### **5. Term of Agreement**

- a. *Term.* This Agreement shall be effective as of the Effective Date and shall terminate at the end of the term of the Underlying Agreement. To the extent that the Underlying Agreement automatically renews, this Agreement shall also automatically renew itself for the same renewal period unless the Department terminates this Agreement for cause as set forth in Section 5(c). Either party may terminate the Agreement consistent with the written notice provision regarding termination in the Underlying Agreement.
- b. *Auto-renewal.* In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the terms of this Agreement and laws referenced in this Agreement that are current and in effect at the time of renewal.
- c. *Termination for Cause.* Notwithstanding the foregoing, Business Associate authorizes termination of this Agreement by the Department if the Department determines that

Business Associate has violated a material term of the Agreement. The Department shall either, at its sole discretion:

- i. Provide the Business Associate an opportunity to cure or end the violation within a time frame and upon such conditions as established by the Department; and
  - ii. Immediately terminate this Agreement in the event the Business Associate has either failed to cure in the time frame provided by the Department or if cure is not possible.
- d. *Obligations of the Business Associate upon Termination.* Upon termination of this Agreement for any reason, Business Associate, shall
  - i. Return or destroy all PHI used, created, accessed, acquired, maintained, or received by the Business Associate on behalf of the Department, and retain no copies in any format. Business Associate shall ensure that its Subcontractors do the same.
  - ii. If the Department agrees that Business Associate may destroy all PHI in its possession, Business Associate shall certify such destruction to the Department.
  - iii. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI and retain only that PHI which is necessary for the Business Associate to continue its proper management and administration, or to carry out its legal responsibilities. Business Associate shall not use or disclose the PHI for other than the purpose for which it was retained, and return to the Department, or destroy if approved by the Department, such PHI when no longer required. Furthermore, Business Associate shall continue to use appropriate safeguards and comply with the HIPAA and HITECH Rules, other applicable state and federal law, with respect to PHI in any format for as long as Business Associate retains the PHI.
  - iv. Upon appropriate direction from the Department, Business Associate shall transmit the PHI to another business associate of the Department consistent with all legal and regulatory safeguards delineated in this Agreement.

## **6. Qualified Service Organization Agreement**

To the extent that in performing its services for or on behalf of the Department, Business Associate uses, discloses, maintains or transmits PHI that is protected by the Part 2 Regulations, Business Associate acknowledges that it is a Qualified Service Organization for the purpose of

such federal law; acknowledges that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 Regulations; and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 Regulations.

## **7. Survival of Business Associate Obligations**

The obligations of the Business Associate under this Agreement shall survive the termination of this Agreement indefinitely.

## **8. Miscellaneous**

- a. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA and HITECH Rules, and/or other applicable laws or requirements. This Agreement may only be amended in writing, signed by authorized representatives of the Parties.
- b. *Injunction.* The Department and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to the Department. Accordingly, in addition to any other remedies available to the Department, Department shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without bond or other security being required and without the necessity of demonstrating actual damages.
- c. *Interpretation.* Any ambiguity in this Agreement shall be resolved to ensure that the Department is in compliance with the HIPAA and HITECH Rules, or other applicable laws or privacy or security requirements.
- d. *Legal References.* A reference in this Agreement to a section in the HIPAA or HITECH Rules or to other federal or state law, means the section as in effect or as amended.

**ATTACHMENT I**  
**STATE OF WYOMING SPECIFIC CONTRACT PROVISIONS**

Terms found in the following State of Wyoming General Provisions are standard State of Wyoming contract requirements. They are agreed to by Goold Health Systems Inc., an Emdeon Company as of April 1, 2015 as a condition this Contract. The terms supplement and are made a part of this Contract to which they are an attachment.

*Contractor Initials:* \_\_\_\_\_ *Vermont State Initials:* \_\_\_\_\_

**STATE OF WYOMING  
GENERAL PROVISIONS**

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.
- B. Applicable Law/Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof for collateral for any financial obligation without the prior written permission of the Agency.
- D. Audit/Access to Records.** The Agency and its representatives shall have access to any books, documents, papers, electronic data and records of the Contractor which are pertinent to this Contract.
- E. Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Contract to acquire similar services from another party.

- F. Award of Related Contracts.** The Agency may award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.
- G. Certificate of Good Standing.** Contractor shall provide to Agency a Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs before and during performing work under this Contract, if applicable.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Agency within ten (10) days of such request and not release such information to a third party unless directed to do so by Agency.
- J. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- K. Extensions/Renewals.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein.
- L. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.
- M. Indemnification.** The Contractor shall indemnify, defend, and hold harmless the State, the Agency, and their officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Contractor's malpractice or malfeasance.

- N. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation, unemployment insurance, and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.
- O. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. §27-9-105 et seq.), the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq., and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this agreement.
- P. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail, or delivery in person at the address(es) provided under this Contract.
- Q. Notice and Approval of Proposed Sale or Transfer.** The Contractor shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract. If the Agency determines that the proposed merger, consolidation, sale, or transfer of assets is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Agency may, at its option, terminate or renegotiate the Contract.
- R. Ownership and Destruction of Documents/Information.** Agency owns all documents, data compilations, reports, computer programs, photographs, data and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information/documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Agency's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide

written notice to Agency confirming the destruction of any such residual Agency-owned data.

- S. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract until this Contract has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).
- T. Proof of Insurance.** The Contractor shall not commence work under this Contract until it has obtained all the insurance required by the Agency and the State and such insurance has been approved by the Agency and the State. Approval of insurance by the Agency and the State shall not relieve or decrease the liability of the Contractor. The Contractor shall file a Certificate of Insurance with the Agency verifying each type of coverage required.
- U. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- V. Sovereign Immunity.** The State of Wyoming and Agency do not waive sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- W. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- X. Termination of Contract.** This Contract may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Contract may be terminated by the Agency immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.
- Y. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.



- Z. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- AA. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- BB. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.